FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
18-CA-257655	March 09, 2020

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Wells Fargo

b. Tel. No.
(800) 869-3557

c. Cell No.

f. Fax No.

g. e-Mail

h. Number of workers employed
200

d. Address *(Street, city, state, and ZIP code)*
13733 University Ave
IA Clive 50325-____

e. Employer Representative

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Others

j. Identify principal product or service
Bank

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* 3 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

--See additional page--

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
(b) (6), Title:

4a. Address *(Street and number, city, state, and ZIP code)*
(b) (6), (b) (7)(C)

4b. Tel. No.
(b) (6), (b)

4c. Cell No.

4d. Fax No.

4e. e-Mail
(b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By (b) (6), Title: (b) (6),
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address (b) (6), (b) (7)(C)

03/8/2020 19:44:48
(date)

Tel. No.
(b) (6), (b)

Office, if any, Cell No.

Fax No.

e-Mail
(b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(3)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee discharged	Approximate date of discharge
(b) (6),	(b) /2019

8(a)(1)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, discussing wages and/or other terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee discharged	Approximate date of discharge
(b) (6),	(b) /2019

8(a)(1)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee discharged	Approximate date of discharge
(b) (6),	(b) /2019

8(a)(3)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
(b) (6),	Termination/rumor spreading/performance reviews	(b) 2018-(b) 2019

8(a)(1)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, discussing wages, hours, or other terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
(b) (6),	Termination/Rumor Spreading/Performance reviews	(b) 2018-(b) 2019

8(a)(1)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee disciplined/retaliated	Type of discipline/retaliation	Approximate date of

against		discipline/retaliation
(b) (6),	Termination/Rumor Spreading/Performance reviews	(b) 2018-(b) 2019

8(a)(1)

Within the previous six-months, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by engaging in surveillance or creating impression of surveillance of employees' union activities.

Name of Employer's Agent/Representative who made the statement	Approximate date
(b) (6), (b) (7)(C)	Jan 2019-Sept 2019

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, MN 55401-2657

Agency Website: www.nlrb.gov
Telephone: (612)348-1757
Fax: (612)348-1785

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March 9, 2020

WELLS FARGO
13733 UNIVERSITY AVE
CLIVE, IA 50325

Re: Wells Fargo
Case 18-CA-257655

Dear Sir or Madam:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney RACHAEL M. SIMON-MILLER whose telephone number is (952)703-2889. If this Board agent is not available, you may contact Supervisory Attorney NICHOLE L. BURGESS whose telephone number is (952)703-2876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not

enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

JENNIFER A. HADSALL
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 18
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March 9, 2020

(b) (6), (b) (7)(C)

Re: Wells Fargo
Case 18-CA-257655

Dear (b) (6), (b) (7)(C):

The charge that you filed in this case on March 09, 2020 has been docketed as case number 18-CA-257655. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney RACHAEL M. SIMON-MILLER whose telephone number is (952)703-2889. If this Board agent is not available, you may contact Supervisory Attorney NICHOLE L. BURGESS whose telephone number is (952)703-2876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

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take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Qualifying for Backpay: We are just beginning to investigate your charge and no decision has been made regarding the merits of your case. However, it is important that employees who might be entitled to backpay because of loss of employment understand their obligation to look for work in order to qualify for backpay if your case has merit. Accordingly, we urge you to promptly provide the Board agent with the names and addresses of all employees who might be entitled to backpay as a result of the charge you filed.

If backpay is due to an employee, the Board requires that the employee offset the backpay by promptly beginning to look for another job in the same or similar line of work. The

Board has held that a reasonably diligent employee should begin searching for interim work within 2 weeks after the employee's termination or layoff or a refusal to hire the employee. If an employee cannot establish that he or she actively tried to mitigate his or her losses, the amount of money owed to the employee might be reduced.

Employees who might be owed backpay should keep careful records of when and where they have sought employment and of job search expenses such as mileage, parking, and copying resumes. Specifically, they should keep a record of each time they attempt to find work, including the date, name of the company, name of person with whom they spoke, the position sought, and the response received.

Very truly yours,

JENNIFER A. HADSALL
Regional Director

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
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Fax: (612)348-1785

May 5, 2020

ALLYSON WERNTZ, ATTORNEY
JONES DAY
77 W WACKER DRIVE
CHICAGO, IL 60601-1701

BRIAN WEST EASLEY, ATTORNEY
JONES DAY
90 SOUTH SEVENTH STREET, SUITE 4950
MINNEAPOLIS, MN 55402

Re: Wells Fargo
Case 18-CA-257655

Dear Ms. Werntz and Mr. Easley:

This is to advise you that I have approved withdrawal of the charge in the above matter.

Very truly yours,

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL
Regional Director

cc: WELLS FARGO
13733 UNIVERSITY AVE
CLIVE, IA 50325

(b) (6), (b) (7)(C)

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case: 18-CA-247897	Date Filed: September 9, 2019

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Wells Fargo Bank, N.A.

b. Tel. No. (515) 237-5885
c. Cell No.
f. Fax No.
g. e-Mail
h. Number of workers employed

d. Address *(Street, city, state, and ZIP code)*
13733 University Avenue
Clive, Iowa 50325

e. Employer Representative
Gary Krier

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Bank

j. Identify principal product or service
Financial Services

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
In the past six months, Wells Fargo has discriminated against (b) (6), (b) - a vocal and well-known union supporter - concerning (b terms and conditions of employment (including but not limited to termination) in an effort to interfere with, restrain, or coerce employees in the exercise of protected concerted activity and to discourage membership in a labor organization.

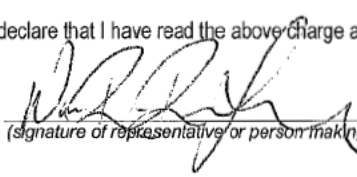
3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Communications Workers of America, District 7

4a. Address *(Street and number, city, state, and ZIP code)*
8085 East Prentice Avenue
Greenwood Village, CO 80111

4b. Tel. No. (303) 770-2822
4c. Cell No.
4d. Fax No.
4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
Communications Workers of America, AFL-CIO

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  *(signature of representative or person making charge)*

William R. Reinken, Attorney
(Print/type name and title or office, if any)

Address 8085 East Prentice Avenue, Greenwood Village, CO 80111

9-9-2019
(date)

Tel. No. (303) 721-7399
Office, if any, Cell No.
Fax No. (720) 528-1220
e-Mail wreinken@cwa-union.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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NATIONAL LABOR RELATIONS BOARD

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September 10, 2019

(b) (6), (b) (7)(C)
WELLS FARGO BANK, N.A.
13733 UNIVERSITY AVENUE
CLIVE, IA 50325

Re: Wells Fargo Bank, N.A.
Case 18-CA-247897

Dear (b) (6), (b) (7)(C):

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney RACHAEL M. SIMON-MILLER whose telephone number is (952) 703-2889. If this Board agent is not available, you may contact Supervisory Attorney NICHOLE L. BURGESS whose telephone number is (952) 703-2876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

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Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

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Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

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JENNIFER A. HADSALL
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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September 10, 2019

COMMUNICATIONS WORKERS
OF AMERICA, DISTRICT 7
8085 E. PRENTICE AVE.
GREENWOOD VILLAGE, CO 80111-2745

Re: Wells Fargo Bank, N.A.
Case 18-CA-247897

Dear Sir or Madam:

The charge that you filed in this case on September 09, 2019 has been docketed as case number 18-CA-247897. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Qualifying for Backpay: We are just beginning to investigate your charge and no decision has been made regarding the merits of your case. However, it is important that employees who might be entitled to backpay because of loss of employment understand their obligation to look for work in order to qualify for backpay if your case has merit. Accordingly, we urge you to promptly provide the Board agent with the names and addresses of all employees who might be entitled to backpay as a result of the charge you filed.

If backpay is due to an employee, the Board requires that the employee offset the backpay by promptly beginning to look for another job in the same or similar line of work. The Board has held that a reasonably diligent employee should begin searching for interim work within 2 weeks after the employee's termination or layoff or a refusal to hire the employee. If an

employee cannot establish that he or she actively tried to mitigate his or her losses, the amount of money owed to the employee might be reduced.

Employees who might be owed backpay should keep careful records of when and where they have sought employment and of job search expenses such as mileage, parking, and copying resumes. Specifically, they should keep a record of each time they attempt to find work, including the date, name of the company, name of person with whom they spoke, the position sought, and the response received.

Very truly yours,

JENNIFER A. HADSALL
Regional Director

cc: WILLIAM R. REINKEN, ATTORNEY
ROSENBLATT & GOSCH, PLLC
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October 29, 2019

ELECTRONICALLY FILED WITH THE NLRB
& SENT VIA E-MAIL TO *rachael.simon-miller@nlrb.gov*

Rachael M. Simon-Miller
NLRB Region 18 – Minneapolis
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, MN 55401

Re: Wells Fargo Bank NA – Case No. 18-CA-247897

Dear Ms. Simon-Miller:

This letter constitutes the Statement of Position of Respondent Wells Fargo Bank NA ("Wells Fargo" or the "Company") with respect to the above-captioned unfair labor practice charge (the "Charge") filed by the Communication Workers of America, District 7, AFL-CIO, CLC ("CWA" or the "Union") alleging that the Company violated Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act ("NLRA" or "Act") by discriminating against former team member (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C)") "concerning (b) (6), terms and conditions of employment . . . in an effort to interfere with, restrain, or coerce employees in the exercise of protect concerted activity and to discourage membership in a labor organization." The Union's allegations are baseless and the CWA cannot establish any violation of the Act under any of its theories.

Contrary to the CWA's allegations, the Company did not in any way retaliate or discriminate against (b) (6), (b) (7)(C) in violation of Sections 8(a)(1) and 8(a)(3) of the Act. Wells Fargo is committed to providing a retaliation-free workplace where all team members feel comfortable raising their hand and expressing concerns. Wells Fargo takes prompt action to ensure that any concerns team members raise are thoroughly and objectively reviewed. However, Wells Fargo is a customer-focused business, and it maintains clear behavioral expectations of its team members. One of Wells Fargo's expectations is that team members treat Wells Fargo's customers with courtesy and respect. Team members who fail to comply with those obligations, are subject to coaching and corrective action, up to and including discharge.

(b) (6), (b) (7)(C) repeatedly failed to comply with customer service standards as expected of every Wells Fargo team member. Throughout (b) (6), few years of employment, (b) (6), displayed a pattern of indifference to the Company's policies and goals in regards to customers' experience. That pattern of behavior was the sole reason for (b) (6), extensive disciplinary coaching record and ultimate discharge. In fact, (b) (6), (b) (7)(C) had received a formal warning less than two months before (b) (6), was discharged. That corrective action set forth express compliance requirements and clear

consequences for [redacted] failure to comply, including discharge. Accordingly, as further discussed below, the Charging Party's allegations must be dismissed, absent withdrawal. [1]

I. FACTUAL BACKGROUND

A. Overview of the Wells Fargo.

Wells Fargo is a diversified, community-based financial services company employing approximately 260,000 employees who serve one in three households in the United States. The Company operates various business segments, including consumer banking, wealth and investment management, and wholesale banking. Wells Fargo operates a Payments, Virtual Solutions and Innovation ("PVSI") business segment, which is focused on delivering payment and deposit capabilities, advancing digital and online offerings to enhance customer experiences and products. The PVSI segment is comprised of various businesses, including Cards and Retail Services ("CRS"), which offers credits solutions to consumers. The CRS business unit includes a Consumer Collections and Servicing ("CCS") division. Team members working in the CCS are responsible for collecting balances owed by customers on past-due CRS accounts as well as other products like Personal Lines and Loans. A CCS team operates at a work location just outside of Des Moines, Iowa – 13733 University Ave., Clive, Iowa ("Des Moines Facility").

None of the Company's team members, including those employed at the Des Moines Facility, have ever been represented by a labor organization for purposes of collective bargaining.

B. Overview of Relevant Company Policies Regarding Team Members & Professionalism.

1. Wells Fargo Maintains a Set of Guiding Principles.

Wells Fargo operates pursuant to guiding principles known as "Vision, Values & Goals." The focal point is the customer. In particular, the Company's vision is to "satisfy our customers' financial needs and help them succeed financially." [2] One of the Company's primary values is to do "[w]hat's right for customers" by "plac[ing] customers at the center of everything we do. We want to exceed customer expectations and build relationships that last a lifetime." (Id.) Further, Wells Fargo aims to be *the* leader in "[c]ustomer service and advice." (Id.) To be the go-to financial service firm, Wells Fargo states that it "listens to and understands its customers and their financial goals" so that it can "provide exceptional service and guidance to help them succeed financially." (Id.) The Company's team members are critical in fulfilling Wells Fargo's mission of providing positive customer experiences. Wells Fargo expects all of its team

[1] This position statement is based upon our current understanding and investigation of the facts and circumstances as of the time it is submitted. By submitting this position statement, the Company in no way waives its right to present new or additional facts and arguments based upon subsequently acquired information. Further, this position statement, while believed to be true and correct in all respects, does not constitute an affidavit.

[2] See *The Vision, Values & Goals of Wells Fargo*, Wells Fargo https://www.wellsfargo.com/about/corporate/vision-and-values/ (last visited Oct. 22, 2019).

members to demonstrate courtesy and respect at all times in their interactions with customers and to act in accordance with the Company's Vision, Values and Goals.

2. Wells Fargo Expects Team Member to Act Professionally.

Team members are also expected to comply with Company policies, including the Team Member Professionalism policy. (*Exh. 1*.) That policy sets specific behavioral expectations of team members. The Team Member Professionalism policy is designed to "promote[] professionalism and encourage[] . . . professional development and achievement" including "consistency, fairness, and respect . . . between team members, their managers, and Wells Fargo." (Id.) It also sets forth behavioral expectations to ensure accountability with, among other policies, the Workplace Conduct Policy. (*Exh. 2.*)

In particular, Wells Fargo's Workplace Conduct policy requires that employees "use good judgment and common sense in making work-related decisions and to be accountable for [their] actions." (Id.) The Company expects its employees "to act with integrity and always do the right thing . . . includ[ing] avoiding obscene, threatening, harassing, discriminatory, or abusive conduct that is likely to damage Wells Fargo's business or reputation, negatively affect coworkers, or that could be disparaging to customers." (Id.) Unprofessional and inappropriate behavior, such as outbursts, yelling, rudeness, bullying, harassment of any form, distracting behavior during work time, conduct that interferes with a team member's ability to perform job duties or provide effective customer service, and conduct that is welcome between team members but is inappropriate in the workplace or during work-related activities, violates Company policies. (Id.) Team members who fail to comply with these policies may be subject to corrective action, including discharge. (Id.)

3. Wells Fargo Maintains a Corrective Action Policy Outlining Employee Discipline.

Wells Fargo maintains a Corrective Action Policy that provides opportunities for appropriate performance counseling and other corrective action so that team members exhibiting performance, conduct, and attendance issues can improve. (*Exh. 3*.) The Corrective Action Policy is provided to all team members in Wells Fargo's Team Member Handbook.[3] (Id.)

The Corrective Action Policy describes certain forms of corrective action that a manager can apply based on consideration of the individual facts and circumstances. (Id.) A manager may issue an informal warning, a formal warning, or a final notice documenting a need for improvement in some specific area of performance. (Id.) If the team member does not achieve the necessary improvement in performance outlined in an informal or formal warning, or if the issue documented in a final notice reoccurs, the team member may be discharged immediately. (Id.)

[3] Wells Fargo periodically updates its employee handbook. Excerpts from the January 2019 and July 2019 employee handbooks are provided in Exhibit 3. The Corrective Action Policy is the same in both versions of the employee handbook.

The Corrective Action policy is not, however, meant to be "progressive." That means that Wells Fargo "does not have to use the levels of corrective action consecutively." Rather, the Company reserves managers "the right to use any part of the process that they feel is appropriate for the situation—and, if necessary, to terminate employment without implementing performance counseling and corrective action." (Id.)

The Company currently delivers corrective action documents to the employee through an online tool for their review and corrective action documents are maintained in the team member's personnel file for the duration of the team member's employment, "regardless of improved performance or change in your position, business group, location, or manager." (Id.)

4. Wells Fargo has No Tolerance for Retaliation.

Wells Fargo prohibits and does not tolerate retaliation of any kind. The Company maintains a zero tolerance retaliation policy that establishes (i) "the expectations and requirements of team members to raise concerns about any suspected unethical or illegal conduct at Wells Fargo without fear of retaliation," and (ii) "the expectation and requirement that Wells Fargo not retaliate against a team member who engages in a protected activity." (*Exh. 4.*) This policy is known as the "Speak up and Nonretaliation Policy." (Id.) Under this policy, "protected activity" is defined to include: "Opposing an employment practice that the team member, in good faith or otherwise in accordance with applicable in-country laws, believes violates a law, rule, regulation, or Wells Fargo policy" and "[e]xercising rights established by applicable law." (Id.) If employees have concerns about certain conduct, Wells Fargo requests and expects that they immediately raise their concerns with trusted supervisors or managers, Human Resources/ Employee Relations and/or the ethics oversight department/ confidential hotline. (Id.)

The Company takes all claims of retaliation seriously. (Id.) Such claims are thoroughly and objectively investigated by the Company's Employee Relations ("ER") department. (Id.) Failure to comply with the Company's Speak up and Nonretaliation Policy may result in corrective action, including discharge. (Id.)

C. (b) (6), (b) (7)(C) Employment at the Des Moines Facility.

1. (b) (6), (b) (7) Worked Directly with Wells Fargo's Customers to Collect Debts on Past-Due Accounts.

(b) (6), (b) (7) began (b) (6) Wells Fargo employment on (b) (6), (b) (7)(C). (b) (6) held a number of positions with Wells Fargo, all involving acting as a debt collector. (b) (6), (b) (7) worked in the CRS department as a collections specialist from (b) (6), (b) (7) 2015 to (b) (6), (b) (7) 2017. From approximately (b) (6), (b) (7) 2017 to (b) (6) 2018, (b) (6), (b) (7) worked in the (b) (6), (b) (7)(C) department as a Home Preservation Specialist. In (b) (6) 2018, (b) (6), (b) (7) again worked in the CRS department as a collections specialist at the Des Moines Facility. At the time of (b) (6) discharge, (b) (6), (b) (7) job title was Account Resolution Specialist 4. (b) (6), (b) (7) job duties, as an Account Resolution Specialist 4, included negotiating directly with Wells Fargo's customers to collect on past-due accounts. (*Exh. 5.*)[4] (b) (6) position was an "[e]xpert level role responsible for providing a quality customer

[4]This is a sample job posting from Wells Fargo's external job posting website for the Account Resolution Specialist 4 position that (b) held at the time of (b) discharge.

experience while working to collect/resolve outstanding account balances" and required "[w]ork[ing] in a professional, customer-centric high volume environment contacting customers to determine reason for payment delinquency and to obtain payment commitment." (Id.) Account Resolution Specialist 4s are further expected to maintain a "higher level of decision making authority when working accounts," "[m]itigate[] risk by adhering to all policies and procedures, as well as local, state and federal regulations," and "provide[] guidance to resolve the most complex escalated inquiries and issues." (Id.)

The team members that work in the Des Moines Facility work in an open floor plan. The work-area consists of approximately four rows of cubicle pods. Each row has about four cubicle pods and about four team members sit in each cubicle pod. Each team has "team leads" and a direct manager. The team leads and the managers also work on the open floor plan along with their team members. The open floor plan permits team leads and managers to observe and interact with team members on a daily basis.

a. [redacted] *Was Required to Follow Procedures to Authenticate Customers.*

Wells Fargo maintains strict data privacy policies. Before releasing personal information over the phone, team members are required to authenticate customers' identity and account(s). For customer calls received by team members, the team member must first obtain the first and last name of the account holder. (*Exh. 6.*) Next, the team member must confirm the account holder using a combination of "primary and secondary data elements," which are as follows:

Primary Data Elements

1. Account number
2. Social Security number or Tax Identification number
   Note: The last four digits are acceptable.
3. Account password
   Note: Passwords are not available on all products, but must be used as a primary element when applicable; direct deposit accounts frequently have passwords.

Secondary Data Elements

1. Full mailing address
2. Date of birth
3. Amount or date of last payment
4. Amount and date of recurring charge or debit
5. Account or loan open date
6. Credit limit

The following are examples of approved data element combinations are as follows:

Scenario	Approved Data Element Combinations*
Two primary data elements available	Account number and Social Security number or Tax Identification number
One primary data element available	• Account number plus one of the secondary data elements • Social Security number or Tax Identification number plus one of the secondary data elements
No primary data elements available	Three of the secondary data elements

*Account password required when available.

Team members are expected to use their judgment in determining the appropriate data elements to authenticate customers and their accounts. Customers commonly are concerned about providing a full SSN, so team members are permitted to authenticate using the last four digits of the SSN. Team members are also trained that if customers are uncomfortable providing a SSN, in full or in part, and do not know their full account number, team members can authenticate with the secondary data elements. For an inbound call, team members are also permitted to request customers' phone numbers to pull up the account, after which the team member will still need to verify with primary and/or secondary data elements.

Wells Fargo follows a similar protocol before releasing customer data between team members. When internal team members need to share information with one-another, Wells Fargo's policy is that team members first identify one another to confirm that they are, in fact, both Wells Fargo employees. Team members confirm each other's identity by sharing a secure one-time authentication (SOTA) code.

b. (b) (6), *Must Exercise Good Judgment to De-escalate and Escalate Customer Calls.*

(b) (6), acted as a debt collector on behalf of Wells Fargo. In many cases the customers with whom (b) (6), interacted were emotional and financially vulnerable. As such, and inevitably, some customers were challenging. To the extent (b) encountered challenges with a customer, (b) (6), was expected to maintain composure and appropriately address the situation, including transferring the call to a team lead or manager when necessary.

Team members are expected and trained to handle customers with respect and professionalism. As detailed above, Wells Fargo is customer-focused, and it requires team members to listen to and understand customers and to provide "exceptional service." Team members receive formal training on customer care throughout their employment. For example, (b) (6), completed a two (2) day training on customer care in May 2018. (*Exh. 7*, "The Heart of Customer Service with CARE Assessment," "Skills for Assisting SCRA Customers," "The Heart of Customer Service With CARE – CRS".) Team members are also periodically coached in team meetings on customer care. As recently as March 5, 2019, (b) (6), managers coached team members on this issue during a team meeting, which included reminders that "engagement" and "tone" are critical to excellent customer care and that "[e]ach and every call needs to be done

with respect and professionalism. Wells Fargo Culture of CARE and Behavioral Expectations need to be followed." (*Exh. 8.*) (b) (6), (b) (7) attended that meeting. (*Exh. 9.*)

Specific Wells Fargo policies and training are tailored to managing challenging customer experiences, including where a customer complains about Wells Fargo's service and/or requests to speak with a supervisor/manager. First, team members must try to address the customers concerns and then, if that fails, transfer the call to a team lead or manager. Wells Fargo's policy is clear on this issue – "[i]f a team member is unable to address or resolve the service complaint for the customer and the customer continues to disagree with the outcome or continues to escalate, route the call to the team lead, supervisor, or manager for resolution." (*Exh. 8.*) This policy was reiterated during the March 5, 2019 team meeting:

> When a call is getting escalated you need to do what you can to de-escalate that call before it becomes a true escalation to a team lead or Manager. Escalated calls will be reviewed and scored after they are transferred to the team lead or Manager to look for coaching op[eration]s. Most of these escalated conversations can be avoided if you treat the customer with respect and listen to their concerns.

(Id.)

c. *Customer Calls Are Reviewed on a Monthly and Ad Hoc Basis.*

Team members are informed that their customer calls are recorded, monitored and subject to review. In fact, they are required to begin each customer call with "this call may be monitored or recorded." (See *Exhs. 10-15.*) Wells Fargo regularly records, monitors and reviews customer calls to ensure that its team members comply with government regulations and Company policies. In order to do that, the Company analyzes team members' calls with customers on a monthly and *ad hoc* basis.

There are four primary avenues for call review: (i) monthly Operations Effective Team (OET) review; (ii) monthly manager review; (iii) review of escalated calls; (iv) review of calls in connection with customer complaints; and (v) review of calls overheard in the working area. The OET randomly selects five calls for each team member each month to ensure that the Company's team members are following Wells Fargo (and regulatory) standards and procedures. OET is separate from (b) (6), (b) (7) team. Team managers, however, review OET's and conduct their own call reviews. Team managers also randomly select five calls each month for review for customer service purposes. It is also common practice that team leads and managers review calls that are escalated to team leads and managers (whether at the customer's request or the team member's option to escalate), calls that are the subject of a customer complaint, and calls overheard in the workplace. When calls and complaints are escalated to a Wells Fargo team lead or manager, the Company thoroughly investigates the complaint. (*Exh.* 16 ("Wells Fargo seeks to respond promptly to complaints and to treat all consumers, customers, and clients in a fair, consistent, and responsible manner.").) The Company, in that investigation, will review the recorded call for purposes of coaching and/or corrective action. To ensure consistency in coaching, the leadership team participates in monthly calibration calls.

2. (b) (6), (b) (7) Encountered Performance Difficulties.

Beginning in at least 2017, when (b) worked as a Home Preservation Specialist, (b) (6), (b) (7) exhibited difficulties in performance, particularly with meeting Wells Fargo's customer service standards. Between (b) (6), (b) (7)(C) 2017 and (b) (6) discharge, (b) (6), (b) (7) received three informal warnings, received poor performance ratings on customer service metrics, received coaching due to (b) (6) poor customer service, and received a formal warning and more coaching for failing to meet performance standards. This pattern of performance issues was the basis for (b) (6), (b) (7) discharge on (b) (6), (b) (7)(C) 2019.

a. (b) (6) *Received an Informal Warning in* (b) (6), (b) (7)(C) *2017 for Lack of Professional and Respectful Communication With Internal Partners and Customers.*

The Company issued (b) (6), (b) (7) an informal warning on (b) (6), (b) (7)(C), 2017 "for lack of professional and respectful communication with internal partners and customers." (*Exh. 17.*) The basis for the informal warning related to two (2) separate calls. (Id.)

At the time of this discipline, (b) (6), (b) (7) was Home Preservation Specialist in the (b) (6) [redacted] Department. (b) (6) reported to (b) (6), (b) (7)(C) at that time. On November 21, 2017, (b) (6), (b) (7) treated another team member unprofessionally by responding to the team member's request by sarcastically stating, "[s]ure man, no problem. Let me drop everything else and put all these other accounts on the backburner so I can make a call out on this account for a customer we talked to yesterday. Is there anyone else you'd like me to call as well?" (Id.) Then, in a customer call on November 29, 2017, (b) (6), (b) (7) spoke over a customer and interrupted the customer several times. (Id.) (b) (6) also laughed at the customer and made several sarcastic comments, including, "You are doing this to yourself, like this is not that complicated." (Id.) The customer asked (b) (6), (b) (7) why (b) would not do something, and (b) (6), (b) (7) replied, "Because I have 120 other accounts in my pipeline to work." (Id.)

When (b) (6) manager at that time, (b) (6), (b) (7)(C) reviewed the calls with (b) (6), (b) (7) to provide feedback, (b) (6), (b) (7) admitted to speaking to the customer in this manner. (Id.) (b) (6) manager determined that (b) (6), (b) (7) conduct was "rude, condescending, and unacceptable" and (b) (6) comments were "sarcastic and lacked respect and professionalism." (Id.) Further, (b) (6) manager found that (b) (6), (b) (7) conduct was "disruptive to the workplace, presents an unprofessional work environment to our customers" and "puts a strain on [] working relationship[s] with [] internal partners." (Id.)

The 2017 informal warning reiterated (b) (6), (b) (7) obligations "to conduct [(b) (6), (b) (7)(C) [redacted]] in a professional manner and to use good judgment in all aspects of [(b) (6) conduct as a Wells Fargo team member." It also reminded (b) (6), (b) (7) of the Company's goal "to maintain a professional and productive work environment for every team member and for our customers and clients." (Id.) (b) (6), (b) (7) was also warned that "[i]f this conduct continues, [(b) (6) may be subject to further corrective action, up to and including termination of employment." (Id.)

b. *[redacted] Received Poor Performance Ratings in [redacted] 2017 Annual Performance Review.*

While working in the [redacted] department in 2017, [redacted] performance declined, and that decline showed in [redacted] 2017 annual performance review. (*Exh. 18.*) [redacted] manager at that time, [redacted] documented [redacted] performance issues month-by-month. (Id.) In the beginning to mid-2017, [redacted] identified that [redacted] was performing at or above expectations. However, at the end of 2017, [redacted] noted that [redacted] performance on the Leadership metric required improvement. (Id.) Specifically, [redacted] noted in the fall that [redacted] conduct at work was negatively influencing [redacted] customer interactions stating, in November 2017, "Please make sure that you are aware of the customer an[d] their situation. We are here to help the customer with their financial situation. We need to make sure that we are doing just that and help bring that loyalty to [W]ells [F]argo." (Id.) In the customer experience section, [redacted] performance deteriorated as well: [redacted] noted that [redacted] scores did not meet the goal for November 2017. (Id.)

c. *[redacted] Received an Informal Warning in [redacted] 2018 for Poor Leadership Performance Ratings Three Months in a Row.*

[redacted] performance issues continued when [redacted] transitioned into CRS as an Account Resolution Specialist. On [redacted], 2018, [redacted] manager in CRS, issued [redacted] an informal warning for failing to meet performance standards and work expectations. (*Exh. 19.*) At this time [redacted] was working in the CRS department and team members were required to maintain a rolling three month performance rating average of 2.7 out of 5 in each of the three categories – customer experience, leadership and performance key performance indicators. (*Exh. 20.*) A score of 2 indicates the team member needs improvement, and a score of 3 indicates the team member is meeting expectations. Team members that do not maintain a rolling three month average of 2.7 out in any of the three categories "can be placed on an Informal Warning – Performance." (Id.)

From [redacted] 2018 to [redacted] 2018, [redacted] failed to meet the leadership performance measures. (*Exh. 20.*) In the three months prior to [redacted] 2018, [redacted] received a 2 in the Leadership category each month. (Id.) The Leadership category requires that team members "Lead yourself, lead the team, and lead the business — in service to customers, communities, team members, and shareholders," "[a]ct with integrity and always do the right thing for the customer," "Inspire, engage, influence, and lead by example," and "[p]roactively seek, give, and apply feedback," among other things. (*Exh. 21.*) [redacted] assigned that score based on [redacted] review of [redacted] monthly performance on each metric. (*Exh. 20.*) However, [redacted] did find that [redacted] met or exceeded expectations in other categories. (Id.) In September 2018, [redacted] congratulated [redacted] on [redacted] collections, but stated [redacted] "call quality" and tardiness issues needed improvement. (Id.) [redacted] then stated that "You have the talent to do well on this team and look forward to seeing you improve in call quality and leadership." (Id.) Again, in [redacted] 2018, [redacted] congratulated [redacted] on [redacted] collections and call quality for the month, but reiterated that [redacted] still needed improvement in the leadership aspects of [redacted] position. (Id.) And in [redacted] 2018, [redacted] did not meet the collections metrics, but [redacted] recognized that the goal was high. (Id.) [redacted] was again notified that [redacted] needed improve[redacted] leadership and call quality

performance – "Your call quality dropped due to you not getting full addresses . . . but this has been coached and shouldn't be an issue anymore." (Id.)

Because [redacted] failed to meet the performance standards for Leadership, and pursuant to the Performance Management Guidelines, [redacted] was issued an informal warning. The informal warning required [redacted] to meet with [redacted] manager bi-weekly to review progress and to work towards "tak[ing] care in how you respond to customers and leadership." (*Exh. 19.*)

(1) *[redacted] Disputed the Informal Warning, and Wells Fargo's ER Department Upheld the Informal Warning.*

On January 7, 2019, [redacted] reported to ER that [redacted] believed [redacted] manager gave [redacted] low marks on Leadership in retaliation for previously filing an internal complaint against that manager. (*Exh. 20.*) An ER representative interviewed [redacted] that day. (Id.) [redacted] complained that the scoring system was too subjective and that [redacted] manager only gave [redacted] low marks so that [redacted] would receive an informal warning and become ineligible for tuition reimbursement. (Id.) In [redacted] interview with the ER representative, [redacted] also was not initially honest about receiving a copy of the informal warning. (Id.) [redacted] ultimately admitted that [redacted] did receive a copy of the informal warning and notices requesting [redacted] acknowledge it, but [redacted] chose not to. (Id.)

Thereafter, ER investigated [redacted] claim of retaliation. An ER representative interviewed both [redacted] and [redacted] reviewed the basis for [redacted] performance ratings with [redacted] manager including supporting documentation. On February 20, 2019, ER notified [redacted] that the decision to issue the informal warning was "based on legitimate business reasons and was in accordance with policy." (*Exh. 20.*)

d. *[redacted] Received Poor Performance Ratings in [redacted] 2018 Annual Performance Review.*

In [redacted] 2018 performance review, [redacted] received poor marks on customer service and leadership metrics. (*Exh. 21.*) On the Customer Experience metric, [redacted] received a rating of "Improvement Needed." (Id.) Customer Experience is, in part, evaluated by reviewing a sampling of the team member's customer service calls and grading the team member's ability to handle the call effectively. Of the 35 calls graded as part of [redacted] performance review, [redacted] received four findings of poor customer service. (Id.) In these four calls, [redacted] demonstrated difficulty in handling calls in a professional manner. (Id.) [redacted] was also found to be "belittling." (Id.) In addition, [redacted] received poor marks for failing to follow Wells Fargo verification policies. (Id.) [redacted] was instructed to "[a]lways treat all customers with care" and that "[t]hese issues have been addressed and need to be the center of attention" to keep "quality and customer effectiveness where it should be." (Id.)

e. *[redacted] Received an Informal Warning in [redacted] 2019 for Failure to Meet Performance Standards and Work Expectations.*

The Company issued [redacted] another informal warning on [redacted], 2019 "for failure to meet performance standards and work expectations." (*Exh. 22.*) In particular, [redacted] failed to

meet Customer Experience expectations for the three months preceding (b) (6), 2019. (Id.) That metric requires team members to provide quality and effective customer service in compliance with Wells Fargo's polices.

(b) (6), received an average rating of 2.63 over (b) (6), (b) 2018, (b) (6), (b) 2018, and (b) (6), 2019 for Customer Experience. (Id.) Those ratings were based on OET reviewed calls as well as calls reviewed by (b) team manager, where both OET and (b) team manager determined that (b) (6), interactions with customers did not meet the Company's expectations. (Id.) For example, during that time (b) (6), had coached (b) (6), on customer service issues, including instructing (b) (6), to say hello to the customer quickly because (b) call reviews noted significant delays. (*Exh. 23.*) (b) (6), was instructed that (b) needed to receive an average of at least 2.65 for March and April and that (b) needed to meet with (b) manager if any of (b) (6), future calls scored below a certain threshold for customer experience. (*Exh. 22.*) The informal warning stated that (b) (6), was "expected to show immediate and sustained improvement in all performance standards and work expectations as outlined" in the informal warning. (Id.) The informal warning also reminded (b) (6), that if (b) did "not consistently meet and sustain performance at an overall acceptable level, [(b) may be subject to further corrective action, up to and including termination of employment." (Id.)

f. *(b) was Coached in March 2019 for Poor Performance on a Customer Call.*

On or about March 28, 2019, (b) (6), manager, (b) (6), met with (b) (6), to review a customer call. On the call at issue, (b) (6), engaged in unprofessional behavior, including talking over the customer. (b) (6), believed that the customer should not have talked to (b) the way that (b) did. (b) (6), provided (b) (6), with constructive feedback. (b) (6), coached (b) that no matter what the customer does, team members must remain professional. (b) (6), also provided (b) (6), with suggestions on how to deescalate calls.

(b) (6), Coaching Log Entry for March 28, 2019

3/28/19	Met with (b) to go over a call that EO listened to and the call went bad after 25 min and customer was very upset and (b) then talked over customer and other issues.	Felt customer shouldn't speak to (b) the way (b) did	Coached (b) on no matter what customers so to us we can not come back at them. We must remain professional on the cal no matter what. Also gave suggestions on what responses work best when a customer is upset to try to calm them down professionally.	3/28/19	(b) said (b) appreciated my coaching on ways to say things back to customer that will help calm the customer down.

g. [redacted] *Misrepresented* [redacted] *Use of* [redacted] *to Attend a Town Hall.*

The [redacted], hosts a quarterly Town Hall. The purpose of the event is to engage directly with team members to explain the state of the business and obtain feedback. The Town Hall events are recorded live and all team members can view it on Wells Fargo's intranet. Some CRS team members are also invited to attend in person at the location where the Town Hall takes place, depending on the capacity.

[redacted] hosted a Town Hall in Des Moines on June 13, 2019. A month prior to the Town Hall, on May 15, 2019, a save-the-date was sent out to "all CRS team members and partners," which consists of thousands of employees across Wells Fargo's national footprint. (*Exh. 24.*) That save-the-date stated that:

> All Cards & Retail Services team members and business partners are invited to join [redacted] for the second CRS Town Hall of 2019 on **Thursday, June 13** starting at **1:00 pm ET / 12:00 pm CT / 11:00 am MT / 10:00 am PT**. You can add the meeting to your calendar by clicking this link.

The save-the-date added that the Town Hall would take place in Des Moines, and that local Des Moines team members would receive "a separate invitation for joining the meeting in person":

> The Town Hall will take place in front of a live audience in Des Moines and will be livestreamed for viewing. Local Des Moines area team members will receive a separate invitation for joining the meeting in person.

The save-the-date provided further details regarding participation:

> **Town Hall participation options:**
>
> *Watch live in person in Des Moines*
> Team members located in the Des Moines area will receive a separate invitation to attend the Town Hall in person.
>
> *Watch via live stream to your computer*
> Team members can watch the livestream webcast from their computers.

About 800 team members work in Des Moines. The room capacity for the live Town Hall was approximately 100 people. Out of those 800 team member, Wells Fargo's communications team randomly selected team members from a census file to invite to attend the Town Hall in person. Selected team members, per the save-the-date, received separate invites requesting that they RSVP to the event. The invites were sent in waves until capacity was reached. (*See Exh. 25.*) In total, approximately 325 employees received invitations to attend in-person, but most declined to attend. (Id.)

[redacted] received the save-the-date that stated that local Des Moines employees would "receive a separate invitation to attend the Town Hall in person." (*Exh. 27.*) However, [redacted] was not randomly selected to receive an invite to attend the Town Hall in person. (Id.) Given that [redacted]

did not receive an invite, [redacted] was not on the Town Hall registration list on the day of the Town Hall. However, [redacted] nevertheless showed up to attend the Town Hall. When [redacted] tried to gain entry to the building where the Town Hall was held, which was approximately ten miles from [redacted] work location, security personnel denied [redacted] entry because [redacted] was not on the registration list for the event and did not otherwise have access to that building. Security contacted [redacted] who was on-site for the event. After determining that there was room, [redacted] escorted [redacted] to a seat. [redacted] attended the live event and the lunch. [redacted] was away from work for nearly three hours, from about 11:15 a.m. to 2:15 p.m.

[redacted] did not request approval from [redacted] to attend the Town Hall. [redacted] did, however, request [redacted]. At about 11:18 a.m. that day, [redacted] emailed [redacted] manager, [redacted], to request leave from 11:30 a.m. to 12:30 p.m. per pre-approved [redacted] leave. (*Exh. 28.*). When [redacted] arrived back around 2:15 pm—nearly two hours after [redacted] reported that [redacted] intended on returning to work—[redacted] reached out to [redacted] and asked why [redacted] had arrived back at work later than planned. (Id.) [redacted] asked if [redacted] absence was related to [redacted] pre-approved [redacted] leave. (Id.) [redacted] claimed [redacted] intended on using the [redacted] leave that day to pick up [redacted] son, but that someone else was able to pick up [redacted] instead. (Id.) [redacted] claimed to [redacted] that [redacted] had been invited to the Town Hall event, so [redacted] decided to go to the event when [redacted] learned [redacted] would not have to pick up [redacted]. (Id.) [redacted] then claimed that [redacted] approved [redacted] time attendance at the event and that [redacted] would enter as such in the time keeping system. (Id.) [redacted] then emailed [redacted] for clarification. (Id.)

[redacted] at that time, [redacted], with another [redacted] present, questioned [redacted] after the event in an effort to understand whether [redacted] had approval to attend. After that conversation, [redacted] complained directly to [redacted] (*Exh. 27.*) In that complaint, [redacted] adamantly claims that [redacted] was invited to attend in person. (Id.) [redacted] believed the questioning was:

> a blatant act of retaliation for my involvement in concerted protected activities. There was no issue raised by anyone in leadership prior to me attending this work related function before, during, or immediately after- even though they were aware I would be/was attending the event and I gave notification. This is yet another act of retaliation in an attempt to 'get rid of me' for my working with the CBB/CWA, AFL-CIO, the CFPB, the Board of Governors of the Federal Reserve, Congresswoman Cindy Axne, The New York Times, The Guardian, Reuters, Bloomberg, Netflix, The Charlotte Observer, and Good Jobs Nation.

(Id.) [redacted] promptly reported [redacted] concerns to the ER department and the ER department investigated [redacted] retaliations claims. (Id.) The ER department notified [redacted] that [redacted] concerns had been escalated for expedited and thorough review. (Id.)

On or about June 24, 2019, the ER department determined that (b) (6), was not invited to attend the Town Hall in-person, nor did (b) inform (b) manager ((b) (6), or request (b) manager's approval for time away from (b) desk to attend the event.[5] (b) (6), , aware that (b) (6) was not invited (because (b) was not on the list) but unaware that (b)(6), did not have (b) manager's approval to attend, permitted (b) to enter the event because there was capacity in the event room. The ER department also determined that (b) (6), attempted to use (b) pre-approved (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) for improper purposes.[6] In sum, the ER department determined that the managers behaved consistent with Company policy and that (b) (6), should be coached on the appropriate use of (b) (6), (b) (7)(C), including whether (b) (6), (b) (7)(C) and that (b) should only attend events in person during working hours if (b) is invited to attend in person given the impact on staffing due to unapproved absences.

h. *(b) Received a Formal Warning in (b) (6), (b) for Failing to Meet Performance Standards and Work Expectations.*

On (b) (6), , 2019, Wells Fargo issued (b) (6), a formal warning for (b) "failure to meet performance standards and work expectations." (*Exh. 29.*) The formal warning was issued in connection with three separate calls, two with customers and a third with another team member in a separate organization. The details of those calls and (b) (6), conduct are as follows:

Call	Description of Call
4/16/2019, Customer Call	*Exhibit 10.*[7] (b) (6), called a customer regarding missed payments on a line of credit. The customer indicated (b) had made efforts to set up a payment plan on a line of credit after (b) faced difficulties making payments, including potential foreclosure. (b) indicated (b) did not want to default on the loan, and that (b) contacted Wells Fargo multiple times to attempt to reach a payment agreement. (b) (6), insisted (b) had not made efforts to repay the loan. (b) (6), informed the customer there was a settlement offer available if (b) could make a lump-sum payment equal to 40% of the total outstanding loan. (b) indicated (b) did not have the lump sum and asked where (b) expected (b) would get that money. (b) (6), said, "I have no idea." When the customer attempted to ask questions and expressed that (b) cannot pay, (b) (6), said to her, "That is why I have said multiple times now," "I've told you multiple times," "I'm trying to tell you but every time I start talking to you, you begin talking over me," "I just explained that," and "Again, I just explained that." When the customer complained (b) (6), was not being sufficiently patient or respectful and asked to be called back by someone else, (b) (6), became argumentative and defensive, saying, among other things, "It is very difficult for you to understand when you can't hear anything I am saying." (b) ultimately hung up on the customer.

[5] The ER investigation found the CCS managers were not otherwise notified in advance which employees were registered to attend the invite.

[6] See Exhibit 35 showing (b) (6), (b) (7)(C) was approved for specific purposes unrelated to family members.

[7] All personal information in the customer calls have been censored for privacy purposes.

4/16/2019, Team Member Call	*Exhibit 11*. A Wells Fargo Virtual Channels Executive Office (EO) employee called regarding a customer account and connected with (b) (6), (b) (7) asked for the customer's SSN. The EO employee identified (b) (6), as an EO employee and asked to complete Wells Fargo's SOTA code verification procedures before discussing the account. (b) (6), demanded the account holder's SSN. When the EO employee again requested to follow the correct verification procedure, (b) (6), insisted (b) needed the customer's SSN. The EO employee insisted for a third time (b) and (b) (6), complete the proper verification procedures before releasing sensitive customer information to each other. When (b) (6), refused again, the EO employee asked if they could escalate the issue to someone else in (b) (6), department. (b) (6), indicated there was not anyone in (b) department that could resolve the issue and threatened to end the call. (b) (6), then hung up.
4/30/2019, Customer Call	*Exhibit 12*. (b) (6), called a customer regarding making payments on an outstanding loan. The customer asked when the loan was taken out, for the original loan amount, and for the term of the loan. The customer asked for the outstanding balance of the loan. The customer was confused and indicated (b did not believe (b took out the loan (b) (6), was describing, nor did (b recall making any payments on the loan as (b) (6), described. (b) (6), confirmed that no payments had ever been made. The customer became very concerned and indicated (b thought (b) identity had been stolen and very adamantly stated (b never took the loan out. (b) (6), was dismissive. When the customer asked again about (b) original loan balance, (b) (6), responded, "I told you three times." The customer again indicated (b was concerned someone had fraudulently taken the loan out in (b) name and asked for help. (b) (6), responded, "And I'm saying for three years we've tried calling you about this." The customer asked to speak to a supervisor. (b) (6), inaccurately told the customer that supervisors do not take calls from customers. The customer asked for (b) (6), to report the suspected fraud. (b) (6), simply said, "Alright," and asked if the customer intended on making payments on another outstanding loan. The customer complained about how (b) (6), was speaking to (b) (stating that (b did not appreciate (b) (6), "smart mouth") and stated (b had fallen upon hard times and will settle (b) accounts. (b) (6), responded, "I don't think this is called for," and threatened to hang up. The customer indicated (b first wanted (b) (6), to properly report the suspected fraud. (b) (6), then hung up on the customer.

An (b) (6), (b) (7)(C) , overheard one of (b) (6), exchanges. Based on what (b) overheard, (b) (6), (b) believed the call was an escalated situation that (b) (6), did not handle appropriately. Pursuant to Wells Fargo's practice of reviewing calls for compliance and coaching opportunities, (b) (6), (b) tried to locate the call in Wells Fargo's call recording database. While trying to locate a customer call, (b) identified another call for potential coaching purposes. Because (b) (6), was not in the office on that day, (b) (6), (b) reached out to (b) on April 18, 2019, via the Company's internal instant messaging system, requesting a meeting to discuss the calls:

(b) (6), (b) 10:47 AM:
i had to meet with (b) i wanted to talk to you about a couple calls i had come across that need coaching
(b) (6), 10:48 AM:
Notice: All instant messages sent to and from Wells Fargo team members are logged and subject to archival, monitoring, review, and/or disclosure. Instant Messaging may not be used to send confidential information outside the Wells Fargo Network.....
k give mee a few min now
(b) (6), (b) 10:49 AM:
just im me when ready
i reserved north 2b at 11
(b) (6), 10:53 AM:
for us?
(b) (6), (b) 10:53 AM:
yes
(b) (6), 10:56 AM:
kk

In an effort to provide feedback and understand (b) (6), perspective, (b) (6), and another (b) (6), (b) (7)(C), met with (b) (6), May 7 and May 8, 2019 to discuss the two April 16, 2019 calls in addition to an April 30, 2019 call. (*See Exh. 30.*) The managers provided (b) with feedback in an effort to help (b) improve. The managers explained that (b) needs to be more patient, empathetic and professional with customers. They also provided (b) with suggestions on how to handle challenging and frustrating situations, including listening to and acknowledging the customer's issues, helping the customer resolve issues in a professional manner and with proper tone, and escalating calls (especially when the individual expressly requests to speak with a supervisor/manager). In addition, the managers reiterated the Company's authentication policy for inbound calls from internal team members. The managers also sought (b) (6), viewpoint. (b) (6), indicated that (b) thought (b) conduct was appropriate. (b) claimed that customers should also be professional and know what is going on with their accounts. The managers explained to (b) that (b) cannot control the customers' responses, and tried to empower (b) to take responsibility to set the tone for the customer's experience.

	(b) (6), (b) (7) and (b) (6), (b) (7)(C) Coaching Log Entries April 16 and April 30, 2019 Calls
4/16/2019, Customer Call Coached by (b) (6), and (b) (6), on 5/7/2019	(b) (6), (b) (7) **Coaching Log Entry**: "Call#1 Pointed out to (b) that 75% of the call went just fine and (b) was doing great at letting the customer speak and then acknowledging the customer in a respectful way. When the customer was wanting more explanation and details the frustration started and the responses became inappropriate in nature and talking over the customer started. (b) said that (b) could tell from the previous notes on the account from 6 months ago that the customer wasn't going to pay so (b) got frustrated that the conversation was going back and forth with no resolution so (b) ended the call by hanging up. Coached that anytime a customer is speaking (b) has to let the customer speak and when (b) has a chance to acknowledge the customers concern to answer to the best of (b) ability and if customer interrupts (b) again to stop talking until customer is finished and then continue. Advised its ok to tell customer they need to let (b) answer the question without being interrupted but to do it in a professional manner and that (b) can't hang up on the customer if (b) doesn't like the way the call is going." (b) (6), (b) (7)(C) **Coaching Log Entry**: "(b) asked immediately how come we are

	in a conference room . . . . (b) (6), (b) (7) responded because this conversation is going to be reviewing calls handled improperly and need coaching and we do the same thing with other agents as necessary. Call #1 started off fine . . . great listening . . . when the Borrower stated asking questions (b) (6) got frustrated and started to go on the defense . . . (b) (6) started talking over the customer and the conversation went downhill quickly . . . . (b) (6) stated this call wasn't going anywhere and hung up on the customer . . . . (b) (6), (b) (7) advised that if the customer is speaking we need to listen . . . . I advis[ed] hanging up on the customer is not appropriate . . . . (b) (6) stated agents hang up with customers . . . . I stated the only time I have heard an agent state they were going to end the call due to crude language. Call was totally derailed once (b) (6) became frustrated. Customer Service was not appropriate on this call."
4/16/2019, Team Member Call Coached by (b) (6), and (b) (6), (b) (7) on 5/7/2019	(b) (6), (b) (7) **Coaching Log Entry**: "Call#2 This was an inbound call from a EO team member asking for details on an account. (b) (6) asked the EO rep for the SSN of the customer. The EO rep advised they needed to do SOTA code first. (b) (6) came back with (b) needed the SSN first as that is what (b) (6) direction was. THE EO rep again said according to policy needed to do the SOTA code first. This became an argument between both of them and EO rep asked to speak to management and (b) (6) advised they don't take calls this continued until (b) (6) hung up on the EO rep. (b) (6) stated that I (b) (6), (b) (7) have told (b) (6) (b) needs to get the SSN from the team member to open account prior to getting SOTA code. I advised I don't remember coaching (b) (6) on any aspects of SOTA issues in past. (b) (6) said I told (b) (6) (b) needed to. I again clarified I wouldn't have done that as that isn't something we would do. I advised we may have coached that (b) needs the SSN to pull up the account from a customer but nothing to do with a team member needing to do SOTA. (b) (6), (b) (7) advised even if (b) felt that the SSN was needed why argue with the team member when could have just done the SOTA code, stayed professional, and moved on with the call. We advised according to procedure need to get agents SOTA code first and complete authentication then get acct info. Also on that call (b) stated Supervisors don't take calls. Coached not to say that as we do if it is needed. Coached how to find out issue and reason for wanting to speak to management and if (b) can't answer the persons reason for wanting transfer and person asks again for management that (b) needs to find someone available to take the escalation. Also advised that (b) cannot hang up on the rep just because (b) doesn't like how the call is going. I offered [t]o send (b) (6) link to the SOTA code procedure and (b) said (b) knew what it was and how to find it. I told (b) (6) to let me know after looking at it if (b) had any questions." (b) (6), (b) (7)(C) **Coaching Log Entry**: "Call #2 (b) (6) wouldn't give SOTA code without a SSN to pull up the account . . . (b) (6) asked 'How did you find this account since (b) didn't pull up the account?' (b) (6), (b) (7) responded someone on the floor overheard the conversation. (b) (6) stated 'that doesn't seem fair since people at the back of the room may not be overheard.' (b) (6), (b) (7) stated when things get heated we can hear agents at the back of the room also. (b) (6) stated that (b) (6), (b) (7) had given direction that we have to get SSN before we do

	SOTA. . . . (b) (6), (b) (7) stated (b) did not remember ever saying that. (b) (6), (b) (7) advised that the SOP does not require to get the SSN 1st. WF Rep asked to speak to a supervisor . . . . (b) (6) advised Supervisor don't take cal[l]s . . . . (b) (6), (b) (7) reiterated that Team Lead and Supervisors are always willing to take escalation calls if available. I also advised that a lot of calls wouldn't need to be escalated if the agent did not get frustrated and stayed professional throughout the call. (b) (6) again hung up on the WF Team Member. (b) (6) again was very inappropriate and unprofessional on this call."
4/30/2019, Customer Call Coached by (b) (6), (b) (7) and (b) (6), (b) (7) on 5/8/2019	The managers identified a third call for review: (b) (6), (b) (7) **Coaching Log Entry**: "Call#3 This call is another example of (b) (6) getting frustrated with the customer and starts to say things back to the customer that should not be said and the call gets out of hand and the customer gets upset. (b) (6) basically is saying the customer should know what's going on with account and (b) feels (b) shouldn't have to repeat (b) (6), (b) (7)(C) multiple times to a customer explaining what needs to be done on account. I pointed out that the customer was being very calm for most of the call and (b) was understandably concerned over the account being $14K and not knowing what it was. Coached (b) (6) that it is (b) (6) job to acknowledge the customers concerns and work with the customer to help resolve the account and or any issues that need to be addressed. In this case if (b) would have just clearly stated to the customer that (b) understood (b) (6) concern and that (b) would forward to Fraud that that call would have went much differently when trying to discuss the related account. I gave (b) (6) several examples of responses (b) could have said to make the call go better." (b) (6), (b) (7)(C) **Coaching Log Entry**: "On this call (b) (6) gets frustrated when the Borrower gets frustrated and starts asking questions . . . beginning of call was fine . . . . (b) (6) actually stated (b) felt (b) did nothing wrong . . . . Borrower asked (b) (6) the same questions . . . . (b) (6) responded 'I told you 3xs' . . . . Borrower was really getting upset and asked for a Supervisor . . . . (b) (6) responded "Supervisors don't take calls". . . . Borrower asks another questions . . . . (b) (6) responds 'I told you 2015'. . . . Advised this is not appropriate customer service . . . . (b) (6) ask[s] 'Do I continue to be a human punching bag?' I stated Borrower didn't understand and therefore asked the question again . . . . (b) (6) stated 'I don't like to repeat myself.' Advised that call wouldn't of needed to be escalated if (b) would of handled the call appropriately . . . . Advised I personally would of asked for a Supervisor when (b) stated 'I told you 3xs' . . . not okay to talk to the customer in this manner . . . I told (b) (6) this is unacceptable behavior."

Prior to interviewing (b) (6), (b) (7) and providing (b) (6) with feedback, on April 19, 2019, (b) (6), (b) (7) submitted a request to the ER department to consult regarding the appropriate course of action regarding (b) (6), (b) (7) conduct, including potential corrective action. The ER department initiated a thorough and objective investigation of the matter, including reviewing Company policies; reviewing (b) (6), (b) (7) personnel file including (b) (6) prior call feedback and corrective actions;

reviewing the customer calls; reviewing the coaching logs for the April 2019 calls; interviewing witnesses including the team lead ((b) (6), (b) (7)(C)) and managers ((b) (6), (b) (7) and (b) (6), (b) (7)(C)) reviewing Company decisions for similar matters; and consulting with legal, business leaders and Human Resources. After the investigation was completed, ER determined that (b) (6), (b) (7) displayed unprofessional behavior during the calls. Wells Fargo leadership determined that a formal warning was an appropriate action, given (b) (6) immediate conduct and the history relating to providing poor customer service. Notably, (b) (6), (b) (7) was no longer with the Company at the time the formal warning was issued to (b) (6), (b) (7).[8]

On (b) (6), (b) (7), 2019, Wells Fargo, via (b) (6), (b) (7)(C), issued (b) (6), (b) (7) the formal warning, which provides as follows:

> • On April 16, 2019, you displayed a lack of empathy towards a customer who had not made payments on a loan. When the customer advised you that (b) thought his identity might have been stolen, you were dismissive of (b) concerns. You were also condescending and argumentative in response to many of the customer's questions. For example, at one point during the call the customer asked about the original balance on (b) loan, to which you responded that you had "told (b) three times." In short, your behavior and attitude during this call did not meet Wells Fargo's standards for customer service and support.
> • On April 16, 2019, during a call with one of your colleagues in the Wells Fargo Virtual Channels Executive Office (EO), you refused to follow the correct verification procedure before providing customer account information. Instead, you demanded that the EO team member follow an incorrect process of providing you the customer's social security number prior to completing the verification procedure. When (b) refused, you became argumentative and combative, telling (b) that you would end the call. You also would not escalate the call to your manager, despite being asked to do so. You then seemingly disconnected the line. Your attitude during this call, as well as your unwillingness to follow the correct verification process, was disrespectful and unprofessional, and it had the potential to jeopardize confidential customer account information.
> • On April 30, 2019, during another collection call with a customer, you once again demonstrated a lack of empathy when the customer attempted to explain (b) difficulties making payments on a line of credit. As the recording of this call demonstrates, you displayed a condescending attitude, at one point even saying to the customer, "I've told you multiple times." You also interrupted and spoke over the customer before eventually hanging up on (b). This type of behavior and attitude during any customer call (or during any interaction that you have as a Wells Fargo representative) falls short of the company's standards and is therefore unacceptable.

(Id.) The formal warning also set forth a "[p]lan to correct the situation," as follows:

> **Plan to correct the situation**
> Going forward, you are expected to meet the performance standards of Phone Call Handling and Customer Service by doing the action below that is checked:
>
> [X] Meet with me Weekly to review your progress against the performance standards outlined above.
>
> [ ] The specific required actions are detailed in a separate Performance Improvement Plan document.
>
> [ ] You are expected to correct the situation outlined above, but no specific action plan is required at this time.
>
> [X] Additional suggestions: Going forward, you are expected to demonstrate empathy, patience, and, most importantly, respect, when interacting with customers and other team members. You will also be expected to conform your behavior to the standards set out in Phone Call Handling and Customer Service and follow correct verification procedures. To monitor compliance with this action plan, you will meet with me on a weekly basis so that we can review your progress towards meeting these expectations.

(Id. at 2.) The formal warning further set forth the consequences of failing to improve, expressly providing that (b) (6), (b) (7) was "expected to show immediate and sustained improvement in all performance standards and work expectations as outlined in this [formal warning]." (Id.) If (b

[8] (b) (6), (b) (7) employment with the Company terminated on about (b) (6), (b) (7), 2019 for reasons unrelated to this matter.

failed to "consistently meet and sustain performance at an overall acceptable level, [(b) (6)] may be subject to further corrective action, up to and including termination of employment." (Id.)

(1) *(b) (6) Disputed the Formal Warning, and Wells Fargo's ER Department Upheld the Formal Warning.*

On the same day (b) received the formal warning, (b) (6), (b) (7) disputed the formal warning by submitting a complaint to the Company's ER department, claiming that Wells Fargo was retaliating against (b) (6). Specifically, (b) claimed that (i) (b) (6) formal warning should not have referenced the 2017 informal warning for similar misconduct because it was more than 12 months old, and (ii) (b) did not believe that another team lead overheard the calls, but that managers tried to locate calls solely to retaliate against (b) (6). ER conducted a thorough and objective investigation, including interviewing the relevant witnesses (including (b) (6), (b) (7) and other three other team members) and reviewing relevant documents and Wells Fargo policies. (*See Exh. 31.*)

First, ER determined that management's concerns relating to (b) (6), (b) (7) performance was warranted because (b) failed to act with the appropriate level of care for the customers and other team member. This determination was based in part on conversations that ER investigators had with (b) (6), (b) (7). In one interview, on about July 8, 2019, (b) (6), (b) (7) was asked whether (b) believed (b) was dismissive, condescending and argumentative with the customer. (b) (6), (b) (7) admitted that (b) was frustrated with the customer and stated that (b) could not get through calls if (b) has to repeat (b) (6), (b) (7)(C)

Second, ER determined that the formal warning was directly related to (b) (6), (b) (7) engagement with customers and another team member. ER's review of the facts found that a team leader did overhear (b) (6), (b) (7) call and alerted (b) (6), (b) (7) that (b) (6), (b) (7) did coach other team members to address customer related matters, and that management did provide advice that it is appropriate to obtain a SOTA code from an internal team member before releasing customer information, that team members should deescalate calls and not hang up, and that team members should involve team leaders or managers (especially where the customer insists).

Third, ER determined that basing the formal warning, in part, on the 2017 informal warning was consistent with Wells Fargo policy per the Corrective Action policy. Pursuant to the Corrective Action policy, warnings remain in a team member's personnel file for the duration of employment and are visible to direct managers for purposes for three years. (*Exh. 3.*)[9] Further, the 2017 informal warning itself provides that (b) (6), (b) (7) "conduct is unacceptable and must stop immediately," and "[i]f this conduct continues, (b) (6) may be subject to further corrective action, up to and including termination of employment." (*Exh. 17.*)

Based on its investigation, on or about August 9, 2019, ER determined that management appropriately addressed (b) (6), (b) (7) conduct and that the formal warning was not retaliatory. ER upheld the formal warning.

[9] Corrective Action policy in effect at the time of the informal warning.

(2) *(b) (6), was Required to Take Steps to Comply with the Formal Warning's Plan.*

Per the formal warning, (b) (6), was required to meet with (b) manager on a weekly basis to ensure compliance with performance standards. Given that (b) (6), was no longer with the Company,[10] (b) (6), (b) (7)(C) , conducted the weekly meetings. At that time, (b) did not have access to the electronic system where recorded calls are stored, so (b sat with (b) (6), while (b took calls and conducted one-on-one meetings with (b) (6), on July 3, July 5, July 12, July 15 and July 17, 2019. (b) listened to (b) (6), interactions with customers and provided feedback. (b) found that (b) (6), at least while being directly observed, was capable of showing empathy with a challenging customer. (b) also coached (b) (6), on customer service expectations and account authentication.

i. *(b) was Discharged on (b) (6), (b) (7)(C) 2019 for Failing to Comply with Performance Obligations.*

(b) (6), again failed to comply with Company policies and violated the terms of the formal warning. On August 1, 2019, (b) (6), received a call back from a customer. (*Exh. 13*.) The details of that call, as well as the customers calls with other Wells Fargo team members complaining about (b) (6), service are as set forth below:

	Description of Call
8/1/2019, Customer Call 1	*Exhibit 13*. A customer called to return a missed call (b had received from a Wells Fargo representative. (b) (6), greeted the caller and immediately asked for the caller's SSN. The customer indicated (b did not feel comfortable sharing (b) social security number over the phone. (b) (6), asked if the customer had a full account number for which (b was calling about. The customer asked what account (b) (6), wanted to know about. (b) (6), responded, "Well I don't know, you called in, I have no idea who I am speaking with." (b) (6), demanded a SSN or full account number in order to assist the customer. The customer explained that (b did not want to give out (b) full SSN due to the risk of identity theft. (b) (6), responded, "Well, if you don't want to provide your social then if you answer the next time we call you, you won't have to do that." The customer indicated (b was not available at the time a Wells Fargo representative called (b) (b) (6), again suggested the customer answer the phone next time if (b wanted to avoid providing (b) SSN. (b) (6), ultimately told the customer, "Ok, well sir if you're not going to provide me your social or account number, I'm going to have to let you go, because I can't do anything." The customer then complained that (b was a long-time customer of Wells Fargo and (b felt like (b) (6), was "being very indifferent." The customer asked to speak to (b) (6), supervisor. (b) (6), indicated (b could not allow the customer to speak with (b) supervisor. The customer then asked for (b) (6), last name. (b) declined to provide (b) last name. The customer again complained (b) (6), was "being very rude." (b) (6), then

[10] (b) (6), employment with the Company terminated on about June 19, 2019 for reasons unrelated to (b) or this matter.

	repeatedly warned [redacted] was going to "disconnect the call," interrupting the customer as the customer asked [redacted] to "let [redacted] finish." [redacted] then stated, "Ok alright [redacted], I'm releasing the line, thank you." [redacted] then hung up.
8/1/2019, Customer Calls 2	*Exhibit 14*. The customer called back and reached another team member, [redacted] the customer informed [redacted] that [redacted] hung up on [redacted] and [redacted] was reluctant to give out SSN and [redacted] wanted to speak to a supervisor. [redacted] in stark contrast to [redacted] expressed [redacted] sincerest apologies and showed sympathy for the customer's negative experience. [redacted] put the customer on hold and approached [redacted] team lead, [redacted]. [redacted] informed [redacted] of the situation and asked [redacted] to take an escalation call. [redacted] stated the man on the call was extremely upset and refused to give any information to get authenticated, [redacted] only wanted to speak to a manager. [redacted] transferred the call to [redacted]. The customer immediately complained about [redacted] and how rude [redacted] was. The customer explained that [redacted] requested [redacted] full SSN and that the customer did not want to give [redacted] full SSN, but [redacted] would give [redacted] last four (4) digits. [redacted] explained that [redacted] was told that without an account number or a full SSN, [redacted] could not help [redacted] and hung up on [redacted]. The customer stated [redacted] has been a Wells Fargo customer for over 20 years and could not believe the way [redacted] was treated. The customer wanted [redacted] to make sure [redacted] was unable to delete the recording of the call, so it could be reviewed by management. The customer began providing [redacted] with information regarding [redacted] current situation and [redacted] phone disconnected.
8/1/2019 Customer Calls 3	*Exhibit 15*. The customer then called back and asked to speak to team lead [redacted]. The customer explained [redacted] was being connected with [redacted] when [redacted] call disconnected. The Wells Fargo team member that received the call explained that [redacted] appeared to be on break and was unavailable but that the team member could connect [redacted] with another team lead who would be able to assist [redacted]. A team lead took the call to discuss the customer's complaints.

[redacted] was notified of the escalated call situation. The following day, August 2, 2019, [redacted] submitted a request to the ER department to consult regarding the appropriate action to take in connection with [redacted] conduct.

While ER investigated [redacted] conduct, [redacted] met with [redacted] to review the customer calls and provide feedback. On August 7, 2019, [redacted] asked that [redacted] share [redacted] position on the calls. (*Exh. 36.*) [redacted] expressed frustration and claimed that Wells Fargo was "out to get [redacted]" and threatened that "[a] lot of collateral damage will happen if this goes anywhere." [redacted] again asked what [redacted] thought about the customer's experience on the call. [redacted] did not think that [redacted] did anything wrong, including hanging up on the customer. [redacted] felt [redacted] conduct was justified because, according to [redacted] the customer was rude. [redacted] explained that [redacted] had many opportunities to show empathy, including when the customer expressed concern about sharing [redacted] SSN because of a recent voice message [redacted] received about being hacked. [redacted] asked why [redacted] did not try to pull up the account by another method, including by phone number. [redacted] claimed that [redacted] was told not to do that. [redacted] asked why [redacted] did not transfer the customer to a team lead or manager. [redacted] claimed that [redacted] was told not to transfer the call if the employee

does not have an account number. At the end of the meeting, [redacted] explained that Wells Fargo was still gathering information relating to the complaint.

Wells Fargo's ER department conducted an objective and thorough investigation of the incident to determine the appropriate action. That investigation involved reviewing Company policies, [redacted] personnel file including [redacted] prior coachings and corrective actions (including the formal warning received less than two months prior), the customer calls, [redacted] notes for the call where [redacted] reviewed the calls with [redacted] internal complaints, and Company decisions for similar matters; interviewing witnesses, including [redacted] and consulting with legal, business leaders and HR. After the investigation was completed, ER determined that [redacted] displayed unprofessional and unacceptable behavior during the calls. ER's review of the information found that [redacted] failed to de-escalate, refused to transfer the customer upon request to a manager, spoke over the customer, belittled the customer and hung up on the customer. The information showed that [redacted] had multiple instances of customer interactions that were not in accordance with Wells Fargo's behavioral expectations.

Wells Fargo leadership determined that discharge was the appropriate action. That is because the Company had provided [redacted] with countless opportunities to improve [redacted] behavior since at least [redacted] 2017 (the date [redacted] received the first informal warning for performance issues relating to customer service), including after [redacted] had just been issued a formal warning and subject to close supervision as part of a plan to improve [redacted] conduct. Wells Fargo determined that [redacted] had displayed an unacceptable pattern of behavior and an unwillingness to change [redacted] behavior. ER supported the decision to discharge [redacted]

On [redacted] 2019, [redacted] and [redacted] called [redacted] (*Exh. 32.*) [redacted] did not answer, so [redacted] left a message asking [redacted] to return [redacted] call. When [redacted] returned the call, [redacted] advised [redacted] that [redacted] was in a conference room and that [redacted] was also in the room. [redacted] following Wells Fargo's "Termination Checklist," (*see Exh. 33.*), then advised [redacted] of the Company's decision to terminate [redacted] employment, (*Exh. 32*).

[redacted] asked when the decision was made. (*Exh. 32.*) [redacted] explained that [redacted] did not have that information, but that if [redacted] had any questions regarding [redacted] termination [redacted] could call Wells Fargo's HR Service Center at (877)-HRWELLS. (Id.) [redacted] requested [redacted] personal email address so that Wells Fargo could send [redacted] a copy of the Wells Fargo departure packet. (Id.) [redacted] did not respond. (Id.) [redacted] asked again. (Id.) [redacted] responded that the Company's decision was "laughable" and was "blatant retaliation." (Id.) [redacted] then asked whether the decision had to do with the internal complaints [redacted] has raised with HR. (Id.) [redacted] responded that the Company does not retaliate against employees. (Id.) While [redacted] explained the non-retaliation policy, [redacted] continued to talk over [redacted] (Id.) [redacted] then explained the final compensation and benefits issues and again asked for [redacted] personal email address. (Id.) [redacted] did not respond, so [redacted] again asked. (Id.) [redacted] stated [redacted] would have someone from [redacted] team send it. (Id.) [redacted] asked if [redacted] had any other questions. (Id.) [redacted] said no. (Id.) [redacted] then thanked [redacted] for returning [redacted] call and [redacted] hung up.

II. ARGUMENT AND AUTHORITIES

A. CWA's Charge is Barred, In Part, by Section 10(b) of the Act.

As a preliminary matter, the Union's Charge is time-barred, at least in part, because certain factual allegations in the Charge occurred outside the six month limitation period provided in Section 10(b) of the Act. Based upon the applicable six month limitations period, any events that occurred prior to approximately March 9, 2019 are time-barred under the NLRA.

Section 10(b) of the Act prohibits the issuance of a complaint "based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." 29 U.S.C. § 160(b). Section 10(b) operates as a statute of limitations with respect to the filing of unfair labor practice charges. *See, e.g.*, *Las Vegas Limousine*, 340 NLRB 1005, 1005 n. 1 (2003) (Section 10(b) of the Act "is a statute of limitations for filing unfair labor practice charges."); *Chemung Contracting Corp.*, 291 NLRB 773, 774 (1988) ("[T]he General Counsel is barred from bringing any complaint in which the operative events establishing the violation occurred more than 6 months before the unfair labor practice charge had been filed and served."). The fundamental policies underlying the 10(b) limitation period are well established. Indeed, the Supreme Court has observed that "these policies are to bar litigation over 'past events after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused,' H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 40, and of course to stabilize existing bargaining relationships." *Machinists Local (Bryan Mfg. Co.), 1424 v. NLRB*, 362 U.S. 411, 419 (1960). The Board has recognized that the Court's decision in *Bryan Mfg. Co.* and the legislative history it cited require "strict adherence" to the 10(b) limitation. *See, e.g.*, *A&L Underground*, 302 NLRB 467, 468 (1991).

Here, at least some of the Union's allegations in the Charge are based on events that occurred outside the Section 10(b) limitations period, including (b) (6), (b) (7) informal warning which (b) received on (b) (6), (b) (7), 2018 and any of the unspecified but alleged protected concerted/union activity that occurred "in the fall of 2018." To the extent that the Charge is based on conduct outside of the 10(b) period, the Charge as to those allegations are untimely and must be dismissed.

B. Wells Fargo Did Not Violate Sections 8(a)(1) and 8(a)(3) of the Act.

Contrary to the CWA's allegations, the Company did not retaliate or discriminate against (b) (6), (b) (7) in violation of Sections 8(a)(1) and 8(a)(3) of the Act.

Sections 8(a)(1) and 8(a)(3) of the Act generally prohibit an employer from discriminating against an employee because he/she engaged in protected activities. Specifically, those sections provide, in pertinent part, as follows:

> It shall be an unfair labor practice for an employer . . . (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; . . . (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in a labor organization.

29 U.S.C. § 158(a)(1), (3). In resolving discrimination cases under Sections 8(a)(1) and 8(a)(3) of the Act, the Board has adopted the *Wright Line* "burden shifting" analysis. 251 NLRB 1083 (1980), *enf'd*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982), *approved in NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). Under the *Wright Line* burden shifting analysis, the Union must first show, by a preponderance of the evidence, that the discharged employee's protected activity was a substantial factor in the employee's discharge. *Manno Electric, Inc*., 321 NLRB 278, 280 (1996). The Union must do so by showing that (i) the discharged employee engaged in protected concerted activities, (ii) the employer knew of these activities, (iii) the employer "harbored animus or hostility towards those activities," and (iv) the employer treated the discharged employee adversely because of those activities. *In re Air Flow Equip., Inc*., 340 NLRB 415, 418 (2003); *American Federation of Teachers New Mexico*, 360 NLRB 438, 448 (2014) ("[T]he General Counsel must show that [the employer] had knowledge of [the employee's] union activity and that there is a causal link between his protected activity" and the adverse employment action.); *New Silver Palace Restaurant*, 334 NLRB No. 44, *15 (2001) (employee's union activity must be "motivating factor" in employer's decision to take adverse action against the employee). Although labeled a *prima facie* case, the charging party at all times bears the burden of proving that the employer was motivated by anti-union animus. *Nat'l Steel and Shipbuilding Co*., 324 NLRB 1114, 1117 (1997).

Section 7 activity is not an impenetrable shield against discipline—including discharge—for violating valid work rules, and the Act "does not give union adherents job tenure." *Carry Cos. of Illinois, Inc. v. NLRB*, 30 F.3d 922, 926 (7th Cir. 1994); *Sahara Las Vegas Corp*., 284 NLRB 337, 347 (1987) ("Courts have cautioned triers of fact against viewing union or concerted activity as a shield from lawfully motivated discipline."); *Chicago Tribune Co. v. NLRB*, 962 F.2d 712, 716 (1992) (quoting *NLRB v. Loy Foods Stores, Inc.*, 697 F.2d 798, 801 (7th Cir. 1983)) (Section 7 "does not give union adherents job tenure."). Nor does Section 7 "protect employees from their own misconduct" that violates reasonable work rules. *Badische Corp.*, 254 NLRB 1195, 1203 (1981); *see, e.g.*, *NLRB v. Cook Foods, Ltd*., 47 F.3d 809, 817 (6th Cir. 1995) ("Being a union activist does not immunize anyone from the natural consequences of sub-standard performance."); *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 n.10 (1945) (the NLRA "does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time"). A discharge is lawful if the employer shows it would have still discharged the employee in the absence of union activity. *Farmer Brothers Co*., 303 NLRB 638, 649 (1991).

Consistently, the Courts have held that the NLRB cannot substitute its judgment for the employer's because it "does not have authority to regulate all behavior in the workplace and it cannot function as a ubiquitous 'personnel manager,' supplanting its judgment . . . for those of an employer." *Epilepsy Foundation of Northeast Ohio v. NLRB*, 268 F.3d 1095, 1105 (D.C. Cir. 2001). An employer retains the right to discipline an employee "for any reason, whether it is just or not, and whether it is reasonable or not, as long as the [discipline] is not, in part, in retaliation for union activities or support." *Tama Meat Packing Corp*., 230 NLRB 116, 126 (1977), *enf'd, Tama Meat Packing Corp. v. NLRB*, 575 F.2d 661, 663 (8th Cir. 1978), *cert. denied*, 439 U.S. 1069 (1979). As the Board explained:

> Congress never intended to authorize the Board to question the reasonableness of any managerial decision nor to substitute its opinion for that of an employer in the management of a company or business, whether the decision of the employer is reasonable or unreasonable, too harsh or too lenient. The Board has no authority to sit in judgment on managerial decisions.

Neptco, Inc., 346 NLRB 18, 20 n.16 (2005). Moreover, employers are not required to enforce their reasonable work rules differently because the employee at issue engaged in protected activity. *See, e.g.*, *Cellco P'ship v. NLRB*, 892 F.3d 1256, 1262 (D.C. Cir. 2018) (an employee and union bargaining committee member was lawfully discharged for lying during a company investigation in violation of company policy); *Ozburn-Hessey Logistics, LLC*, 362 NLRB No. 180, at *3–5 (2015) (employer lawfully issued a final warning to and then discharged an openly pro-union employee for having accumulated too many attendance points in violation of its work rule). It is well settled that work rule violations constitute a legitimate, non-discriminatory reason for an employee's discharge. *See, e.g.*, *Cellco P'ship*, 892 F.3d at 1262.

Here, the Union cannot meet the burden of establishing a *prima facie* case of discrimination under any of its theories. (b) (6), (b) (7) alleged protected concerted activity or union activity was not the basis for the Company's action. In the absence of any proof of any motivational link or anti-union animus, the CWA's unfair labor practice allegations fail. Further, Wells Fargo would have made those decisions regardless of any protected concerted activity or union activity. Thus, even if the Union is able to establish a *prima face* case of discrimination under any of its theories—which it cannot—the Company clearly can establish that it would have coached, disciplined and discharged (b) (6), (b) (7) and questioned (b) (6) about (b) (6) attendance and time keeping in the absence of any protected activity.

Wells Fargo is committed to providing a retaliation-free workplace where all team members feel comfortable raising their hand and expressing concerns. As such, the Company maintains a zero tolerance policy for retaliation against team members. Where a team member feels he/she has been retaliated against, Wells Fargo takes prompt action to ensure that the concern is thoroughly and objectively reviewed. To do this, the Company developed a dispute resolution process through which each team member has an opportunity to use internal problem-solving resources with Wells Fargo personnel outside of their direct reporting relationships, including senior management and Employee Relations. However, Wells Fargo's business is customer-focused, and the Company maintains clear behavioral expectations. Among those expectations are requirements that all team members, treat Wells Fargo's customers with courtesy and respect. Where team members fail to comply with those obligations, they are subject to coaching and corrective action, up to and including discharge.

(b) (6), (b) (7) failed to comply with what is expected of every team member. Not once, but repeatedly, and to a shocking degree. The Company's actions relating to (b) (6), (b) (7) were warranted by the underlying facts and were wholly unrelated to any concerns that (b) (6), (b) (7) may have raised directly with or publically about Wells Fargo. The plain truth is that (b) (6) repeatedly demonstrated a blatant indifference to the Company's performance standards and expectations of team members. And, Wells Fargo enforced its performance standards and policies consistently,

regardless of protected activity. [redacted] violated the Company's Vision, Values & Goals, which resulted in interference with Wells Fargo's core mission to deliver quality customer service and advice, to exceed customer expectations and build relationships that last a lifetime. [redacted] failures to comply with Company performance standards began in 2017—well before any alleged protected activity—and were noted by a manager other than [redacted] when [redacted] worked in a different department. [redacted] failures continued even after [redacted] was coached and issued corrective action. It is for these reasons, and these reasons alone, that the Company disciplined and discharged [redacted]

As for the Union's other allegations, there is simply no evidence that [redacted] was, as the CWA alleges, "more closely supervised" for retaliatory reasons. The managers' conduct in questioning [redacted] time-keeping and attendance, and providing feedback on customer calls is consistent with Wells Fargo's policies and practices. To the extent that [redacted] was "more closely supervised," it was a response to [redacted] history of non-compliance with Company policy.

Wells Fargo properly issued [redacted] an informal warning on [redacted], 2018, it lawfully questioned [redacted] regarding [redacted] time-keeping practices on March 25, 2019, it properly issued [redacted] a formal warning and coached [redacted] regarding [redacted] poor performance, and it took no unlawful action in connection with [redacted] attendance at the Town Hall on June 13, 2019. Ultimately, Wells Fargo properly discharged [redacted] for [redacted] violations of lawful policies and poor job performance. Because, as set forth above, the Board has held that union activism is not an impenetrable shield against adverse employment action, and the Act does not insulate workers from the consequences of their own poor job performance. *Carry Cos. of Illinois, Inc.*, 30 F.3d at 926; *Chicago Tribune*, 962 F.2d at 716 (quoting *Loy Food Stores, Inc.*, 697 F.2d at 801). Wells Fargo, like all employers, is free to coach, discipline and discharge its employees pursuant to lawful policies. In short, all of Wells Fargo's actions were privileged and were not carried out with unlawful motives. The CWA's Charge must then be dismissed, absent withdrawal.

1. Wells Fargo Did Not Violate the Act by Issuing [redacted] an Informal Warning on [redacted] 2018.

Any claim relating to [redacted], 2018 informal warning is time barred under the NLRA and cannot serve as a basis for an unfair labor practice. In any event, Wells Fargo did not violate Section 8(a)(1) or 8(a)(3) by issuing [redacted] an informal warning. [redacted] received the corrective action because of [redacted] poor performance and failure to comply with Company policies. The Union's allegation therefore has no merit and must be dismissed, absent withdrawal.

The Union cannot meet the burden of establishing a *prima facie* case of discrimination under this theory. *First*, neither the CWA, on the face of its Charge, nor the Region in its request for evidence, submitted any specific evidence of [redacted] protected concerted or union activity for which [redacted] was allegedly subject to retaliation. The Charge concludes that [redacted] was discriminated against because [redacted] was "a vocal and well-known union supporter" and the Region's October 4, 2019 letter concludes that [redacted] was discriminated against because "of [redacted] protected concerted activity and/or [redacted] union activity." The Region's correspondence on October 23, 2019 provides more of the same. As we understand it, the basis for each of the alleged unlawful act, is as follows: (i) [redacted] "involvement with the [redacted] and

CWA" was known to Wells Fargo because sometime "[i]n the fall of 2018" "(b) (6), submitted HR/ethics complaints on behalf of (b) (6), (b) (7)(C) and others concerning issues such as the conduct of (b) supervisor and the department's performance metrics," (ii) (b) (6), was quoted in a (b) (6), 2019 (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [11] (iii) (b) (6), participated in a (b) (6), (b) (7)(C) which was attended by the (b) (6), (b) (7)(C) on (b) (6), (b) 2019, and (iv) (b) (6), was invited to a meeting between members of the (b) and Wells Fargo's senior management on April 17, 2019.[12]

As an initial matter, Wells Fargo has no knowledge of any organizing activities by the CWA at its Des Moines facility or anywhere else. The Company's senior leadership is generally aware of the (b) (6), negative publicity campaign directed towards Wells Fargo. However, the (b) is not a labor organization, within the meaning of Section 2(5) of the NLRA.[13] More importantly, the CWA did not present any evidence that (b) (6), direct managers, (b) (6), or any other manager, had *actual* knowledge of (b) (6), involvement in any (b) activity at the time that (b) (6), was issued the informal warning. The (b) does not represent, or seek to represent, employees for purposes of collective bargaining. Rather, the Region implies that since Wells Fargo's senior leadership *may* have some general knowledge about the (b) and (b) (6), managers were interviewed in connection with some of (b) (6), complaints, that (b) (6), must have known. And, the Region admitted that "[t]here is not a separate incident of [protected concerted activity]/union activity preceding each alleged adverse action against [(b) (6), including the 2018 informal warning. Such conclusory and vague allegations are insufficient to establish that (b) (6), engaged in any actual protected concerted or union activity for which (b was subject to retaliation.

What the evidence does indicate is that (b) (6), demonstrated indifference towards (b) job responsibilities at Wells Fargo and serving Wells Fargo's customers, even before (b received the 2018 informal warning. In fact, another manager in a different department issued (b) (6), an informal warning for performance and customer service issues. To the extent that (b) (6), complained about (b) terms and conditions of employment and about (b) (6), the Company's understanding was that (b was merely articulating (b) own general gripes and dissatisfaction. Activity that is engaged in "solely by and on behalf of the employee himself" is not "concerned" activity. *Meyers Indus.*, 281 NLRB 882, 885 (1986) *enf'd sub nom. Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), *cert. denied* 487 U.S. 1205 (1988) ("to find an employee's activity to be 'concerted,' we shall require that it be engaged in with or on the authority of other employees.").

[11] (b) (6), (b) (7)(C)

[12] In April 17, 2019, (b) contacted ER and requested an opportunity to meet with the CEO of Wells Fargo. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), who reports to the CEO, agreed to meet with (b) (b) (6), (b) , (b) (6), (b) er, and a representative from human resources met with (b) via telephone. (b) expressed concerns (b had, including concerns regarding (b manager, (b) (6), (b explained (b felt (b had been subject to retaliation for filing a complaint with ER regarding (b) (6), During the meeting, (b mentioned (b involvement with (b) (b) (6), , (b) (6), (b) (7)(C), (b) (6), and the HR representative listened to (b) (6), concerns and emphasized that they were committed to making sure (b concerns were heard.

[13] A labor organization is "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. § 152(5).

Second, the CWA cannot establish that Wells Fargo harbors anti-union animus. "[N]either an employee's union activism nor an employer's knowledge of that activism constitutes sufficient evidence for a finding of antiunion animus." *Chicago Tribune Co.*, 962 F.2d at 717. There is no evidence that other team members who are publically affiliated with the (b) (6), suffered retaliation. Also, other team members who are not involved in any protected activity (to the Company's knowledge) receive similar treatment. (*See, e.g.*, *Exh. 34.*) This is because Wells Fargo is committed to ensuring that practices and policies are applied in a fair and consistent manner without regard to union sentiment. Where an employee suffers an adverse employment action pursuant to a practice or policy that is not disparately enforced, there is no violation of the Act. *Carry Cos. of Illinois, Inc.*, 30 F.3d 922, 929 (7th Cir. 1994) (company proved no disparate application where the company terminated another driver for the same offense); *Eldeco, Inc. v. NLRB*, 132 F.3d 1007, 1011-13 (4th Cir. 1997) (finding that employer did not violate the Act by discharging employees pursuant to a drug policy because the drug testing policy was not disparately enforced in order to discourage union activities); *Landis Plastics, Inc.*, 1998 WL 1984900 (finding no violation of the Act where employer did not promote employee in part because the employer's "point system was adopted to avoid partiality and subjectivity in selection for promotions, and was applied equally and objectively to all applicants."). Further, where team members who are not involved in any union activities (to the Company's knowledge) received similar treatment, it can hardly be argued that the Company disparately applied its policies and practices, giving rise to an inference of antiunion animus. *See, e.g.*, *Sears, Roebuck & Co. v. NLRB*, 349 F.3d 493, 508 (7th Cir. 2003) (evidence did not support the Board's disparate treatment theory where the employer put forth evidence of employee who was terminated for similar conduct, but was not involved in union activities).

Third, even if (b) (6), could establish that (b engaged in protected concerted or union activity, the CWA cannot establish causal nexus between such activity and the 2018 informal warning. To determine whether an employee's Section 7 activity was a motivating factor in the employer's adverse employment action, the Board analyzes certain circumstantial evidence, including: the timing of the action, whether the announcement of the action was accompanied by remarks about union organizing, the employer's hostility to the union, and whether the employer's justifications withstand scrutiny. *Cannondale Corp.*, 310 NLRB 845, 849 (1993); *Capitol EMI Music, Inc.*, 311 NLRB 997, 1006 (1993), *enf'd*, 23 F.3d 399 (4th Cir. 1994). "Mere suspicions of unlawful motivation are insufficient to establish violations of the NLRA." *Asarco, Inc. v. NLRB*, 86 F.3d 1401, 1408 (5th Cir. 1996) (internal quotations omitted). All the Union has here are mere suspicions. And, the facts negate any inference of retaliation. This is because (i) any of the alleged protected conduct is too vague, (ii) the Company encourages team members to speak up, (iii) the Company does not tolerate retaliation, and (iv) the facts easily demonstrate that the Company's motivations were lawful.

There is no evidence of specific protected activity in connection with the informal warning. The only alleged protected concerted and union activity that may be timely considered here was that conduct occurring "in the fall of 2018." That unspecified conduct is too vague to establish any nexus. Even if (b) (6), was interviewed in connection with (b) (6), prior complaints, there is nothing to suggest that (b) (6), had actual knowledge of protected activity, within the meaning of the NLRA, and acted on that knowledge to (b) (6), detriment. The other alleged activity – being (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C), and attending an executive level meeting in April 2019 – occurred after the 2018 information warning.

Further, the Company prohibits and does not tolerate retaliation of any kind. (*Exh. 3.*) One of the Company's guiding principles is to engage its workforce on issues impacting Wells Fargo's business and its employees—"[o]ur team members are our most valuable resource. We want to be the employer of choice—a place where people feel included, valued, and supported; everyone is respected; and we work as a team."[14] Wells Fargo expects and encourages employees to openly speak up about their terms and conditions of employment on Company-sponsored communication systems and elsewhere. And, if an employee has concerns about certain conduct, Wells Fargo requests that he/she immediately raise them with a trusted supervisor or manager, human resources and/or the ethics oversight department/ confidential hotline. (Id.) Wells Fargo takes any claims of retaliation very seriously. (Id.) Such claims are thoroughly and objectively investigated by the Company's HR and ER departments. (Id.) Failure to comply with the Company's Speak up and Nonretaliation Policy may result in corrective action, including discharge. (Id.)

It is clear that, in practice, Wells Fargo adheres to principles of non-retaliation and fairness. There is ample, and unambiguous, evidence that the Company did not make issue (b) (6), the informal warning *because* of (b) (6) complaints to HR/ethics complaints or support of (b) (6) even assuming that such activity constituted protected concerted and/or union activity and was known to (b) (6), (b) (7) The Company took every issue that (b) (6), (b) (7) raised seriously. The ER department conducted thorough and objective reviews of each concern (b) raised. And, although the ER department may have interviewed witnesses in connection with those complaints (including managers, like (b) (6), (b) (7)(C) such knowledge is too tenuous to establish that a manager acted with retaliatory intent. The mere fact that (b) (6), (b) (7) may have complained about (b) (6) own compensation and expressed dislike for (b) (6), (b) (7) to HR and that (b) (6), (b) (7) may have known about a complaint is not enough to establish any causal nexus.

As detailed above, (b) (6), (b) (7) did not meet certain performance expectations. As such, and pursuant to the Performance Management Guidelines, the Company, through (b) (6), (b) (7) issued (b) (6), (b) (7) an informal warning because of (b) (6) poor work performance. That decision was upheld after the ER department, upon (b) (6), (b) (7) request, conducted a thorough and objective review of the decision. Ultimately, the ER department determined that the informal warning was based on legitimate business reasons and was in accordance with policy.

Even in the absence of protected conduct, the Company would still have issued the informal warning and had legitimate business reasons to do so. The NLRA "does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time." *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 n. 10 (1945). Moreover, the Board has held that "[d]iscipline of an employee is a matter left to the discretion of the employer." *NLRB v. Consolidated Diesel Electric Co.*, 469 F.2d 1016, 1025 (*quoting NLRB v. Ogle Protection Service, Inc.*, 375 F.2d 497, 505-506 (6th Cir. 1967). The Board has repeatedly upheld discipline and discharging of poorly performing employees. *See, e.g.*, *Hotel Burnham &*

[14] See *The Vision, Values & Goals of Wells Fargo*, Wells Fargo https://www.wellsfargo.com/about/corporate/vision-and-values/ (last visited Oct. 22, 2019).

Atwood Café, 366 NLRB No. 22, *3 (Feb. 28, 2018) (discharge of employee was proper where employee violated the employer's security protocol by leading a mixed delegation of employees and nonemployees to the security-protected back offices to deliver a petition, employee "flagrantly violated the hotel's security protocol and unnecessarily placed at potential risk the security of other employees and the Respondent's property, including valuables, confidential files, and financial documents."); *Regal Health & Rehab Center, Inc.*, 354 NLRB No. 71 (2009), slip op. at 2, 21–26, *reaffirmed in light of New Process Steel,* 560 U.S. 674 (2010), at 355 NLRB No. 63 (2010) (adopting administrative law judge's ruling that employer did not violate the Act by disciplining and subsequently discharging employee for various errors including omissions from documentation); *Beverly Enters.*, 310 NLRB 222, 224–26 (1993) (holding that employer did not violate the Act by discharging a nursing employee for insubordination and patient neglect, including failing to shave and bathe patients, even though the employee had also engaged in protected activity); *D & W Food Centers, Inc.*, 305 NLRB 553 (1991) (upholding discharge decision, where employer "establish[ed] a pattern of unsatisfactory work and a failure to improve after warning and counselling").

The informal warning was issued based on (b) (6), (b) (7) poor job performance. (b) (6), (b) (7) decision was well-documented, consistent with Company policy and upheld after ER's objective review. The Union's allegation is without merit and must be dismissed, absent withdrawal.

2. Wells Fargo Did Not Violate the Act by Questioning (b) (6), (b) (7) About (b) (6) Time Keeping Practices on March 25, 2019.

Next, the CWA alleges that (b) (6), (b) (7) "more closely supervised" (b) (6), (b) (7) on March 25, 2019 by "questioning (b) (6) about signing in to work two minutes early." Wells Fargo did not violate Section 8(a)(1) or 8(a)(3) by this alleged conduct. There is no evidence to suggest that (b) (6), (b) (7) unlawfully questioned (b) (6), (b) (7) and it's the Company's position that any questioning was lawful. The Union's allegation therefore has no merit and must be dismissed, absent withdrawal.

First, for substantively similar reasons to those articulated above with respect to the 2018 informal warning, the CWA cannot establish a *prima facie* case of retaliation. The CWA did not present any specific evidence as to how (b) (6), (b) (7) "more closely supervised" (b) (6), (b) (7) or the manner or method of (b) (6), (b) (7) "questioning." Nor did the CWA present any specific evidence that (b) (6), (b) (7) questioning was in retaliation for (b) (6), (b) (7) protected concerted activity and/or (b) (6) union activity. Rather, the CWA assumes, presumably because of (b) (6), (b) (7) position as (b) (6), (b) (7) manager, that (b) (6), (b) (7) had actual knowledge of (b) (6), (b) (7) alleged protected conduct. Even if (b) (6), (b) (7) was generally aware of (b) (6), (b) (7) dislike for (b) (6) or disapproval of (b) (6) managerial style and decisions, it does not follow that (b) (6), (b) (7) knew that (b) (6), (b) (7) had engaged in *protected* concerted or union activity, and questioned (b) (6) for those reasons.

Second, Wells Fargo denies that (b) (6), (b) (7) acted with any anti-union animus or unlawful motive. The facts are that managers sit near team members and are responsible for ensuring that team members comply with all policies, including scheduling, time keeping and attendance. The NLRA does not prohibit an employer from questioning an employee about (b) (6) work schedule and (b) (6), (b) (7) would have questioned (b) (6), (b) (7) about (b) (6) this issue regardless of any protected concerted and/or union activity. *Guardian Indus. Corp.*, 313 NLRB 1275, 1277 (1994) (no

unlawful interrogation where supervisor asked employee where he had been when he arrived late to work, even though the supervisor also asked what the employee thought the union would do for him if the plant was unionized, because the supervisor simply made a "legitimate inquiry" into why the employee was late and replied to the employee's "intemperate" response to that inquiry); *see also Volt Info. Scis.*, 274 NLRB 308, 317-18 (1985) (employee was not discharged due to anti-union animus where employee had continuous attendance problems and his supervisor had repeatedly spoken with him about his poor attendance, and reminded him that it could result in discipline). The Union's allegation has no merit and must be dismissed, absent withdrawal.

3. Wells Fargo Did Not Violate the Act by Coaching (b) (6), and Issuing (b) (6) a Formal Warning for (b) (6) Conduct on (b) (6), (b) (7)(C) and (b) (6), (b), 2019.

Further, the CWA alleges that Wells Fargo retaliated against (b) (6), on May 7, 2019, by "more closely surprising (b) (6) and on (b) (6), , 2019 by issuing (b) (6) a formal warning. Both of these claims fail. Neither the coaching nor the formal warning were motivated by anti-union animus or (b) (6), alleged protected concerted and/or union activity. These actions were taken in an effort to improve (b) (6), job performance and educate (b) (6) regarding better customer service practices. Wells Fargo's efforts to improve (b) (6), work clearly do not constitute retaliation. As a result, the Union's allegation has no merit and must be dismissed, absent withdrawal.

First, for substantively similar reasons to those articulated above with respect to the 2018 informal warning, the CWA cannot establish a *prima facie* case of retaliation. The CWA did not present any specific evidence that the coaching or formal warning were issued in retaliation for (b) (6), alleged protected concerted activity and/or (b) (6) union activity. Rather, the Union assumes that (b) (6), (b) (6), (b) (7)(C) and (b) (6), have actual knowledge of that alleged protect conduct, presumably because of their position as managers at the Des Moines Facility. Further, the only alleged protected concerted activity occurred "in the fall of 2018," and, as we understand the allegations, relate to (b) (6), complaints about (b) (6), That activity is too vague and too remote in time to establish any motivational link. Even assuming (b) (6), was generally aware of (b) (6), disapproval of (b) (6), managerial style and decisions, it does not follow that (b) (6), (or (b) (6), or (b) (6), (b) (7)(C), for that matter) knew that (b) (6), had engaged in *protected* concerted or union activity, and coached (b) (6) or issued a formal warning for those reasons.

Second, even if the CWA were able to establish *prima facie* case—which it cannot—Wells Fargo's decision was still lawful. Indeed, the Company would have provided feedback to (b) (6), and issued (b) (6) the formal warning, and had legitimate business reasons to do so, in the absence of protected conduct. The Board has repeatedly upheld discipline for poorly performing employees, including where employees have displayed a pattern of unsatisfactory conduct. *See, e.g.*, *D & W Food Centers, Inc.*, 305 NLRB 553 (1991) (upholding discharge decision, where employer "establish[ed] a pattern of unsatisfactory work and a failure to improve after warning and counselling"); *Volt Info. Scis.*, 274 NLRB at 313-17; 329-30, 333-34 (upholding discharge decision where employees showed a pattern of poor work, failed to meet standard production rates, made excessive errors, and had attendance issues and other performance problems).

(b) (6), was provided feedback and issued a formal warning based on (b) failure to perform (b) job duties consistent with the Company's policies and expectations. As described in more detail above, (b) (6), call with a customer was overheard by a team leader. The team leader was alarmed by (b) (6), mistreatment of the customer and identified the situation as an opportunity to provide feedback. (b) therefore reached out to (b) (6), manager, (b) (6), Consistent with the Company's practices, (b) (6), and (b) (6), met with (b) (6), to review the calls and provide feedback. (b) (6), for (b) part, deflected responsibility and expressed frustration over Wells Fargo's expectations of team members to provide a quality customer experience. Combined with (b) prior performance issues, (b) conduct indicated that (b was indifferent to the Company's policies and intentionally chose not to comply. At that time, (b) (6), was on particularized notice—given (b) 2017 and 2018 informal warnings and prior feedback—that (b) treatment of customers was unacceptable and (b could receive corrective action, up to and including discharge, for such misconduct.

After the meeting with (b) (6), (b) (6), reached out to the ER department to consult, in an effort to ensure that (b took the appropriate action. The ER department conducted a thorough and objective review of the facts. Ultimately, ER supported issuing (b) (6), a formal warning based on the immediate circumstances and (b) (6), prior performance issues. Notably, that formal warning was issued to (b) (6), *after* (b) (6), was no longer (b) manager.

Nothing was out of the ordinary here on Wells Fargo's part. (b) (6), displayed blatant indifference to Company rules and customer service. (b) was on explicit notice that failing to abide by Company policy requiring that (b treat customers with respect and professionalism could result in coaching and corrective action. The Union's allegation has no merit and must be dismissed, absent withdrawal.

4. Wells Fargo Did Not Violate the Act in Connection with (b) (6), Attendance at the June 13, 2019 Town Hall.

Next, the CWA alleges that on June 13, 2019, (b) (6), "more closely supervised" (b) (6), because (b) (6), "refus[ed] to approve time away from (b) desk and question[ed] (b) about (b) attendance at the Town Hall meeting." As noted above, (b) (6), was not invited to attend the Town Hall in person, and requested (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) leave at the time of the Town Hall meeting. Given the circumstances, the Company's managers appropriately addressed (b) (6), time away from (b) desk on June 13, 2019 to attend the Town Hall. Wells Fargo denies that managers were motivated by anti-union animus or any protected concerted and/or union activity. The Union's allegation lacks any merit and must be dismissed, absent withdrawal.

First, for substantively similar reasons to those articulated above with respect to the 2018 informal warning, the CWA cannot establish a *prima facie* case of retaliation. The CWA did not present any specific evidence that (b) (6), was initially refused time away from work and questioned about attendance in retaliation for (b) (6), protected concerted activity and/or (b) union activity. The only alleged union activity occurred outside of the office in early 2019 and the only alleged protected concerted activity occurred "in the fall of 2018." Again, the CWA assumes (b) (6), had actual knowledge of that alleged protected conduct, presumably because of (b) position as (b) (6), manager at that time. Assuming (b) (6), was generally aware of (b) (6),

disapproval of (b) (6), managerial style and decisions, it does not follow that (b) (6), or any other manager at the Des Moines Facility, actually knew that (b) (6), had engaged in *protected* concerted or union activity, and initially refused (b) (6), time away from work and questioned (b) (6) about attendance at the Town Hall. The CWA's alleged protected activity is too attenuated to establish any anti-union animus or motivational link.

Second, the Company would have engaged in that conduct in the absence of protected activity. (b) (6), was questioned about (b) (6) attendance at the Town Hall event because (b) was not invited nor did (b) seek (b) (6) manager's permission to attend. Despite those facts, (b) (6), chose to attend the Town Hall and post-Town Hall lunch. (b) (6), had previously informed (b) (6), that (b) needed to take (b) (6), (b) (7)(C) leave that day (albeit for a purpose not within the terms of (b) (6), (b) (7)(C) approved (b) (6), (b) (7)(C) leave).[15] (b) (6) never requested leave to attend the Town Hall. So, when (b) (6), entered (b) (6) time for purposes of payroll, (b) (6), initially refused to approve the time. In addition, (b) (6), was questioned about (b) (6) attendance by (b) (6), (b) (7)(C) because (b) attended the Town Hall without an invitation or permission. It is true that (b) (6), received a save-the-date that said "All Cards & Retail Services team members and business partners are invited to join (b) (6), (b) (7)(C) for the second CRS Town Hall of 2019 on Thursday, June 13 . . ." However, that notice also expressly and unambiguously stated–twice–that Des Moines team members would receive a separate invitation to attend in person. (Id., "Des Moines area team members will receive a separate invitation for joining the meeting in person" and "Team members located in the Des Moines area will receive a separate invitation to attend the Town Hall in person.") Conveniently, in (b) (6) complaint to (b) (6), (b) (6), does not reference the "separate invitation."

What is clear is that (b) (6), was not invited to the Town Hall, but that (b) went without permission and under false pretenses. Even so, (b) was permitted to attend the Town Hall in person, without incident or discipline. Wells Fargo's ER department took (b) (6) retaliation claims seriously, but determined that they were unsubstantiated. There is nothing to suggest that Wells Fargo engaged in any unlawful act against (b) (6), under these circumstances.

5. Wells Fargo Did Not Violate the Act by Discharging (b) (6), on (b) (6), (b) (7)(C) 2019.

For its part, the Company gave (b) (6), every opportunity to succeed and accommodated (b) (6) apparent (or intentional) shortcomings through continuous feedback and progressive discipline. (b) (6) received feedback and discipline from different managers and in different departments, since at least December 2017 – before any alleged protected concerted activity or union activity occurred. Wells Fargo gave (b) (6), countless opportunities to work with (b) (6) team leads and managers to properly perform (b) (6) job duties. (b) (6), was provided particularized and positive attention by numerous managers, including (b) (6) who coached and encouraged (b) (6), for weeks on following appropriate processes and handling customers with respect and

[15] It is well-established that discharging an employee for (b) (6), (b) (7)(C) fraud is lawful. There is no right in the (b) (6), (b) (7)(C) (or the NLRA for that matter) to be "left alone" when utilizing (b) (6), (b) (7)(C) leave because "[n]othing in the (b) (6), (b) (7)(C) prevents employers from ensuring that employees who are on leave from work do not abuse their leave." *Callison v. City of Philadelphia*, 430 F.3d 117, 121 (3d Cir. 2005). Although Wells Fargo did not discipline (b) (6) for this behavior, (b) (6) could have been discharged for (b) (6), (b) (7)(C) fraud. *Id., see also* (b) (6), (b) (7)(C) (employer's decision to discharge employee as a result of employee's "fraudulent behavior" regarding the use of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was not retaliatory under (b) (6), (b) (7)(C)).

professionalism after (b) (6), (b) (7) received a formal warning. For whatever reason, (b) (6), (b) (7) was not motivated to meet the job requirements.

At the outset the Union's claim fails, because—once again—the CWA cannot established a *prima facie* case of retaliation. That is because the Union cannot establish any anti-union animus or motivational link. The CWA did not present any specific evidence that (b) (6), (b) (7) was discharged in retaliation for (b) (6) protected concerted activity and/or (b) (6) union activity. The only alleged union activity occurred outside of the office at the latest in April 2019 and the only alleged protected concerted activity occurred "in the fall of 2018" and was in connection with complaints filed about (b) (6), (b) (7) Notably, (b) (6), (b) (7) was not (b) (6), (b) (7) manager when the customer call issues occurred in August 2019. Thus, the CWA assumes that (b) (6), (b) (7) and (b) (6) had actual knowledge of (b) (6), (b) (7) alleged protected conduct solely because of their positions as (b) (6), (b) (7) direct and two-up manager at that time. There is no evidence that either (b) (6), (b) (7) or (b) (6) had actual knowledge of any *protected* concerted or union activity, or that they carried out the discharge. The CWA's alleged protected activity is too attenuated to establish any anti-union animus or motivational link. *See, e.g.*, *In re Patent Trader, Inc.*, 229 NLRB 1042, 1044 (1977) (upholding termination where "the timing of Brown's termination on January 21, 1976, was far removed [four months] from the date of (b) (6) protected activity which took place on September 19, 1975").

Even if the CWA were able to establish *prima facie* case—which it cannot—Wells Fargo's decision was still lawful. That is because the Company has legitimate business reasons for ensuring that its team members follow Company policies relating to customer interactions. Wells Fargo is, after all, in the highly competitive financial services business, which depends on providing superior customer service. The Board has repeatedly upheld discharge decisions where the employee exhibited a pattern of poor customer service. *See, e.g., Arnold Ready Mix Corp.*, 259 NLRB 202, 205-06 (1981) (employee was not discharged for anti-union animus but poor performance where employee was a concrete truck driver and customers repeatedly complained they did not want him at their worksite because he was a dangerous driver, was argumentative, and made low-quality concrete pours); *Mineola Ford Sales, Ltd.*, 258 NLRB 406, 410 (1980) (poor performance, not anti-union animus, was the motivating factor for discharge where employee, a car salesman, exhibited a poor attitude, had to be repeatedly reminded to service customers and did not meet expectations when he did interact with customers, and had poor sales performance); *104 West Operating Corp.*, 275 NLRB 959, 966-67 (1985) (waiter at a restaurant was discharged for poor customer service, not anti-union animus, where several customers complained the waiter was rude and "pushy" and waiter had previously been reprimanded for failure to follow appropriate procedures in serving customers). The Board has similarly held that "insubordination and refusal to obey instructions constitute reasonable grounds for disciplining an employee, and discharge for insubordination or refusal to obey instructions is perfectly lawful." *NLRB v. Consolidated Diesel Electric Co.*, 469 F.2d 1016, 1025 (1972) (*citing Visador Co. v. NLRB*, 386 F.2d 276, 281 (4th Cir. 1966)); *Maryland Drydock Co. v. NLRB*, 183 F.2d 538, 540 (4th Cir. 1950) ("it is not an unfair labor practice to discharge an employee for exhibiting a defiant and insulting attitude towards his [supervisor].").

Where the employer brings evidence of a pattern of poor performance, the Board has repeatedly found the employer overcame the General Counsel's *prima facie* case. *See, e.g., D &*

W Food Centers, Inc., 305 NLRB 553 (1991) (upholding discharge decision, where employer "establish[ed] a pattern of unsatisfactory work and a failure to improve after warning and counselling"). For instance, in *Eaton Corporation*, the Board found the employer overcame the General Counsel's *prima facie* case where the company showed it would have discharged the employee in the absence of his protected activity as a result of the employee's repeated errors, mistakes, and poor work product. 262 NLRB 86, 96-97 (1982). The employee in that case had received "numerous written warnings" regarding his performance, and the employee's manager and employee relations manager both testified the employee made "many errors and mistakes, far more than other employees." *Id.* at 96. The employee was "an intense and somewhat sensitive individual, [who] became fearful of and obsessed with critical remarks about his work." *Id.* That fear, in turn, contributed to the employee's "continued mistakes." *Id.* Accordingly, he was not discharged because of his union support or activities and the Company met its burden of proving it would have discharged the employee in the absence of any protected activity.

Similarly, in *Volt Information Sciences, Inc.*, the NLRB found several discharges were not based on anti-union animus, but poor work performance. 274 NLRB at 333-34. One employee was properly discharged because testimony and documentary evidence showed he was discharged for "poor work performance," "failure to follow correct procedures," failure "to adhere to proper guidelines," and "the frequency of his errors." *Id.* at 313-14. The employee received memoranda documenting his performance issues, reviewed those memoranda with his supervisors, and received warnings that failure to show improvement would result in termination, "but it did no good." *Id.* Similarly, another employee was discharged for poor work performance, not anti-union animus, where the employee's performance record was "studded" with warnings of poor performance and documentation of errors. *Id.* at 316. The employee's supervisor testified that the employee and one other co-worker were the only workers that made "mistakes with any frequency," and while the co-worker's performance improved, the discharged employee's did not. *Id.*at 317. "The only time his work was ever passable was while he was in training." *Id.* The employee was given five months to improve his rate of errors, was warned failure to improve would result in termination, and yet the employee continued to make the same mistakes. *Id.*

Yet another employee in *Volt* was discharged for poor work performance, as well as attendance issues, and the Board found no violation of the Act. *Id.* at 330. That employee's rate of production was well below the target rate of production set for all employees, and the quality of his work was unsatisfactory. *Id.*at 329. The employee was warned that he would be discharged if his work product did not improve, and the employee's work still declined. *Id.* at 329-30. This evidence of work performance issues combined with the employee's repeated attendance problems was enough to overcome the General Counsel's *prima facie* case. *Id.* Another employee was properly discharged not for the *frequency* of his errors, but the seriousness of his errors. *Id.* at 315-16. In that case, the employee's supervisor brought serious errors in the employee's work to the employee's attention, and the supervisor placed him on probation for one week. *Id.* The supervisor informed the employee that he would be closely monitored during his probation, and that failure to improve could result in termination. *Id.* During the employee's probation, the supervisor caught more mistakes and the employee was terminated as a result. *Id.* The Board found the employee was terminated for his substantial mistakes, not for his union activity, even though the employee's supervisors had few complaints

about his work before the employee was placed on probation, because of the "profusion of serious errors" that the employee made around the time of his discharge. *Id.*

Like the employees in *Eaton* and *Volt*, (b) (6), had recurring performance issues that spanned several years, different departments, and different managers. The last straw came on August 1, 2019, when a long-time customer submitted a complaint about (b) (6), On that day, (b) (6), spoke with an elderly customer who expressed sincere concern about revealing (b) full SSN due to hacking. Rather than utilizing other approved data elements to authenticate the customer (per policy), including merely requesting the last four digits of the SSN, (b) (6), dismissed the customer's concerns, said (b could not help the customer if (b did not provide (b) SSN, and then hung up on the customer. Compounding (b) technical failure to properly authenticate, (b) (6), treated the customer with a shocking level of indifference. The customer understandably called back to complain about (b) mistreatment, twice. The juxtaposition of (b) (6), treatment of the customer and the team member who received the return call is illuminating.

Wells Fargo does not accept that sort of behavior from its team members or treatment of its customers. Before landing on any corrective action, however, the Company, through its ER department, launched a thorough and objective review of the facts. Ultimately, Wells Fargo determined that (b) (6), did not follow the authentication policy and did not act consistent with the Company's expectations. In light of (b) multiple infractions, beginning at least in December 2017, overall disregard and indifference towards (b) job responsibilities, and the Company's responsibilities to its customers, Wells Fargo determined that discharge was warranted.

The Company's actions were a direct response to (b) (6), history of poor work performance and the CWA cannot establish otherwise. Wells Fargo's action was not motivated by anti-union animus or any alleged protected concerted or union activity. Rather, the evidence indicates that Wells Fargo provided (b) (6), repeated opportunities to perform (b) job duties consistent with Company policies. Two and a half months before (b) (6), termination, (b received a formal warning citing the same issues that had been cited in two previous informal warnings. Pursuant to the Company's Corrective Action Policy, Wells Fargo could have discharged (b) (6), for (b) performance issues in (b) 2019 due to (b) failure to improve the performance issues cited in (b) two previous informal warnings. Instead, the Company gave (b) (6), another chance. Wells Fargo issued (b) (6), a formal warning, which included a performance improvement plan. (b) (6), was discharged only when (b had failed to improve after having been issued two informal warnings and a formal warning as well as coaching. The Company's decision to provide these prior opportunities for improvement strongly suggests that Wells Fargo was not motivated by anti-union animus or retaliation. *See, e.g.*, *Tower Automotive Operations USA I, LLC*, 355 NLRB No. 1, slip op. at 3 (Jan. 15, 2010) (employer's reinstatement of employee "when it could have discharged him, strongly suggests that it was motivated by something other than animus when it terminated him [for subsequent misconduct]."). (b) (6), for whatever reason, chose not to take advantage of those opportunities. (b) conduct was unacceptable and tantamount to insubordination.

Given that disciplinary action was clearly appropriate under the circumstances more fully described above, the Charge must be dismissed in its entirety. Accordingly, the Union cannot

demonstrate a *prima facie* case of discrimination or relation because the CWA failed to establish that any of the complained of acts, including (b) (6), (b) (7) discharge, were motivated by alleged Section 7 activity. And, even if the Union could establish a *prima facie* case, under any of its theories, which it cannot, the Company would have engaged in such action in the absence of such activity.

C. Section 10(j) Injunctive Relief is Not Appropriate.

The Region requests the Company's position as to relief pursuant to Section 10(j) of the NLRA, even though the CWA did not request such relief in its Charge. The Region should not pursue Section 10(j) relief because injunctive relief is not appropriate in this matter. There is no basis—whatsoever—for injunctive relief under the facts of this case because, most importantly, no unfair labor practice has been committed.

Section 10(j) relief is an "extraordinary remedy." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 9 (2008), which provides "a limited exception to the federal policy against labor injunctions" and "is reserved for 'serious and extraordinary' cases when 'the remedial purpose of the Act would be frustrated unless immediate action is taken.'" *McKinney ex rel. N.L.R.B. v. S. Bakeries, LLC*, 786 F.3d 1119, 1123 (8th Cir. 2015) (citing *Sharp v. Parents In Community Action, Inc.*, 172 F.3d 1034, 1037-39 (8th Cir. 1999)); *G.P.D., Inc. v. NLRB*, 430 F.2d 963, 965 (6th Cir. 1970) *cert. denied* 401 U.S. 974 (1971) (describing an injunction under Section 10(j) as a remedy of "last resort"). Given the extraordinary nature of Section 10(j) relief, the Board has recommended limiting pursuit of 10(j) injunctions to 15 general scenarios, all of which concern interference with employees' ability to be represented by bargaining representatives of their choosing thereby causing an irreparable chilling of Section 7 rights. *See Section 10(j) Categories*, NLRB, available at: https://www.nlrb.gov/what-we-do/investigate-charges/10j-injunctions/section-10j-categories (last accessed Oct. 25, 2019); *see also* Section 10(j) Manual User's Guide, Office of the General Counsel (Sept. 2002). Before pursuing such relief, which is the NLRB requires Regional Directors to evaluate (among other things) "whether there is a sufficient showing that an unfair labor practice has occurred and whether the effects of that unfair labor practice threaten to make the Board's ultimate remedial orders a nullity unless interim relief is obtained." NLRB Case Handling Manual § 10310.2.

District courts will consider granting Section 10(j) relief if the Regional Director establishes that (1) there is reasonable cause to believe that an unfair labor practice has occurred, and that (2) the injunctive relief sought is just and proper. *See*, *e.g.*, *Mattina ex rel. NLRB v. Kingsbridge Heights Rehab. & Care Ctr.*, 329 F. App'x 319, 321 (2d Cir. 2009); *Kentov v. Sheet Metal Workers' Int'l Ass'n Local 15, AFL-CIO*, 418 F.3d 1259, 1263 (11th Cir. 2005). To determine whether, the "just and proper" standard has been met, courts will apply traditional equity principles, weighing the threat of irreparable harm to the movant, the balance of harms, the movant's likelihood of success on the merits, and the public interest. *S. Bakeries, LLC*, 786 F.3d at 1123; *see Parents in Cmty. Action, Inc.*, 172 F.3d 1034, 1038 (8th Cir. 1999) ("the Board properly concedes that the reference to "just and proper" in § 10(j) incorporates traditional equitable principles"). Pointedly, Section 10(j) relief is "just and proper" only where it "appear[s] from the circumstances of the case that the remedial purposes of the Act will be frustrated unless relief pendente lite is granted." *NLRB v. Aerovox Corp.*, 389 F.2d 475, 477 (4th

Cir. 1967); *see also Schaub v. Detroit Newspaper Agency*, 154 F.3d 276, 279 (6th Cir. 1998) (holding that courts "must be mindful that the relief to be granted is only that necessary to preserve the ultimate remedial power of the Board and is not to be a substitute for the exercise of that power") (citation omitted). Courts are judicious with the use of Section 10(j) relief, since the relief sought may effectively deny a party the right to contest the underlying charges before the Board. *See Detroit Newspaper Pub. Ass'n v. Detroit Typographical Union No. 18*, 471 F.2d 872, 876 (6th Cir. 1972), *cert. denied*, 411 U.S. 967 (1973) (noting that there is no remedy "more dangerous in a doubtful case, than the issuing [of] an injunction") (quotation omitted).

Under these standards, Section 10(j) relief is clearly not warranted here. For the reasons outlined above, there is no reasonable cause to believe that an unfair labor practice has occurred. Each unfair labor practice allegation put forth by the Union is without merit. There is also no evidence that the traditional remedies of back pay and reinstatement would not adequately remedy any violation of the law and restore the status quo in this case.[16] Moreover, forcing Wells Fargo to place (b) (6), (b) (7) back into the workplace without a decision on the merits would require the Company to return an individual to work who has repeatedly demonstrated an intentional indifference to rules, and put Wells Fargo's Vision, Values & Goals with regard to customer service at risk.

In sum, considering the extraordinary nature of Section 10(j) relief, the unlikely success on the merits, and the significant harm to the Company caused by the injunction relative to the easily remediable harms to (b) (6), (b) (7) if injunctive relief is denied; Section 10(j) injunctive relief is wholly inappropriate – and indeed unachievable – in this case.

III. CONCLUSION

In light of the foregoing facts and the applicable law, the CWA's Charge has no merit and must be dismissed in its entirety. Contrary to the Union's allegations, the evidence demonstrates that (b) (6), (b) (7) consistently failed to meet the Company's expectations as a team member. In just a few years of employment with the Company, (b) (6), (b) (7) displayed a repeated and intentional disregard for, and indifference to, (b) (6) responsibilities as team member and the Company's responsibilities to its customers. Any protected or union activity cannot, and does not, shield (b) (6) from discipline, including discharge. Even if the Company was aware of any union or protected activity, the Board recognizes that Section 7 activity is not an impenetrable shield and the Act does not give union adherents job tenure. Moreover, Section 10(j) injunctive relief is inappropriate in this case.

Respectfully yours,

s/ Brian West Easley

Brian West Easley

[16] This case does not present a "nip-in-the-bud" case involving unlawful employer efforts to chill union organizing activities. Although the employer was generally aware of the (b) (6) negative publicity campaign, Wells Fargo has no knowledge of any organizing activity by the CWA or any other labor union at the Company's Des Moines Facility.

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November 26, 2019

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Re: Wells Fargo Bank, N.A.
Case 18-CA-247897

Dear Ms. Werntz and Mr. Easley:

This is to advise you that I have approved withdrawal of the charge in the above matter.

Very truly yours,

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL
Regional Director

cc: (b) (6), (b) (7)(C)
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